

v. 2783

No. 13653

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United States  
Court of Appeals  
For the Ninth Circuit.

*see vol. 2781-2*

CHIN LIM MOW,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record  
In Five Volumes  
Volume V  
(Pages 1739 to 2127)

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.

FILED

APR 21 1953

PAUL F. O'BRIEN  
CLERK



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Court of Appeals  
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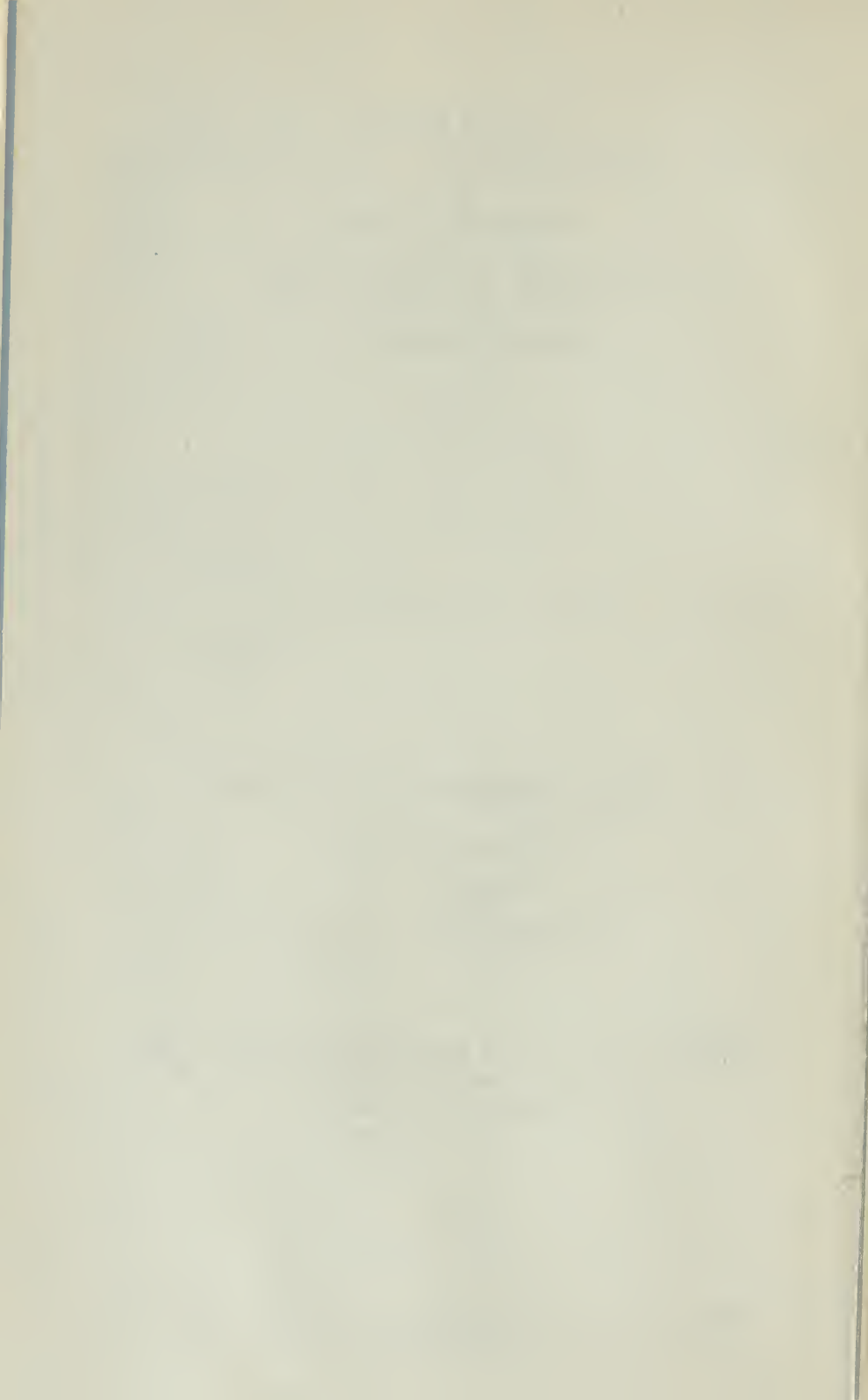
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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.





October 8, 1952. 2:00 P.M.

The Court: You may proceed, gentlemen.

FRANK FILICE

resumed the stand.

Cross-Examination

(Continued)

By Mr. Sullivan:

Q. Mr. Filice, I will now direct your attention to exhibit 270, which is a chart prepared in connection with the analysis of certain capital accounts and loans payable of the Elite Company introduced here during the course of the testimony of Mr. Farley. You recall that chart, do you?

A. Yes, I do.

Q. Have you examined that chart during the course of your assistance here as special agent in this case?

A. Yes, I have gone over the material in the chart. I have examined it.

Q. Now, I will direct your attention to an entry of Mr. Farley's under that section of the account which is under his title "Capital contributions," and in the year 1945 Admay Company \$15,000. Do you see that there?

A. Yes, I see an entry under "Capital contributions" designated as the Admay Company with a monetary amount of \$15,000 in the column headed 12/31/45. [1888]

(Testimony of Frank Filice.)

Q. Now, I believe that you have told us already that you analyzed the bank account of the Admay Company, did you not?

A. All with the exception of two checks that I never saw.

Q. Yes. Did you find during the course of your examination any money going from Admay Company to Elite Company?

A. To the best of my recollection, no, unless it was in those two missing checks.

Q. And what is the amount again can you give me it, of those two missing checks?

A. One check which was cleared at the bank on December 29, 1945, was in the amount of \$20,000. Another check which cleared the bank under date December 31, 1945, was \$6,000.

Q. Well, now, did your investigation disclose at any time any money going from the Admay bank account to the Elite Company bank account in the year 1945?

A. I found no checks that could have been identified as going from Admay bank account to the Elite Company for the year 1945.

Q. Now, there is testimony in the record, is there not, Mr. Filice, of Mr. Farley's in connection with that exhibit 270 which you have before you, charging the defendant with the \$16,000 item which you see there as the capital contribution, do you recall that?

A. Yes, I do.

Q. Now, I will put that down underneath the column which I have written on the board, and I will

(Testimony of Frank Filice.)

ask you to be good [1889] enough, Mr. Filice, to add for me the total of these deposits by Mr. Chan in the Admay account of \$300; the payments of the children's taxes in the amount of \$12,600; the payments of taxes of May Taam in the amount of \$1770.67; payments for Hom Yuk Lim's taxes in the amount of \$1,743.57; taxes paid on the property which you identified for me as Admay-operated in the sum of \$2180.08; and this last item of \$16,000. I wonder if you would be good enough to total that column for me?      A. (At blackboard.)

Q. What do you find to be the total of that set of figures that I gave you?      A. \$34,594.32.

Q. Now, Mr. Filice, I will direct your attention to this exhibit which you discussed with Mr. Fleming yesterday, and which I believe is exhibit 334.

Mr. Sullivan: I wonder if I might have these copies distributed to the ladies and gentlemen, your Honor?

The Court: You may.

Mr. Sullivan: I will pass them around (handing documents to the jury).

Q. I believe you told us that you prepared this exhibit under the direction of Mr. Fleming?

A. That is true.

Q. And in the course of the preparation of it you referred to certain evidence that has been introduced in this case, [1890] did you not?

A. Yes.

(Testimony of Frank Filice.)

Q. And in instances you have indicated for reference purposes the exhibit number—I might say in all instances—on the left hand column of the exhibit?

A. That is correct.

Q. Tell me, first, what you have as a total in the first column which is classified as “total,” tell me what you have as a total at the bottom of the entire exhibit.

A. \$122,614.17.

Q. Now, I will direct your attention to the first item on the first page of the exhibit which refers to property at 847 Clay Street, does it not?

A. Yes, sir.

Q. Is that one of the properties that you and I discussed this morning, and which is also included on your chart, which is exhibit 275 in evidence?

A. It is.

Q. And I believe you told Mr. Fleming that that is the property that also appears on Mr. James Wiley’s exhibit, which is 169 in evidence?

A. I did.

Q. And I think you have told us that the partnership return which you considered in respect to this property is under the name of Hom Yuk Lim, Janet Chan and Chin Lim Mow? [1891]

A. I did.

Q. You identify Janet Chan as the daughter, of course?

A. I do.

Q. And you have heard Mr. Shew testify that Hom Yuk Lim is the brother-in-law of Mr. Chan?

A. I recall some testimony of that character, but

(Testimony of Frank Filice.)

I am not entirely clear that he testified he was a brother-in-law.

Q. Now, directing your attention to the next item there, which is on your chart 334, you find also that this property you discussed with me this morning, did you not?

A. That is the second item on the chart?

Q. Yes. A. Yes.

Q. That is property at 112 Waverly Place, is it not? A. That is right.

Q. This appears, also, on the little chart which is exhibit 275 in evidence, does it not?

A. The block chart? Yes.

Q. And the exhibit 17, which is the partnership return of income for this property to which you referred is in the name of Bertha L. Chan and Mar Quong Hing, is that correct? A. That is true.

Q. You have identified Bertha L. Chan as a member of the family of the defendant, have you not? A. I have. [1892]

Q. And I will ask you if you find, or if you recall without looking at the exhibit, that the share of Mar Quong Hing in that partnership was reported upon exhibit 1, the individual income tax return of the defendant?

A. I believe I recall that, yes, sir.

Q. Now, the next property which you have there, 674 Jackson Street, you also discussed that with me this morning, didn't you? A. I did.

Q. And that is in your little chart, which is exhibit 275, is it not? A. It is.

(Testimony of Frank Filice.)

Q. And the partnership return of income which is reflected by your exhibit No. 19, on this exhibit 334, is in the name of Janet Chan and Bertha Chan, is that correct?

A. The one for the year 1945? Yes, sir.

Q. Well, that is what your chart pertains to, isn't it, the year 1945?

A. That is correct. That is correct.

Q. Is that correct? A. Yes, sir.

Q. And, of course, you identify those two ladies as daughters of the defendant, do you not?

A. Janet Chan and Bertha Chan? Yes, sir.

Q. Now, the next item is an item pertaining to the rental [1893] income reported on exhibit 13, is it not?

A. It is.

Q. And that is a partnership operation that we discussed this morning, isn't it?

A. I didn't discuss any partnership operation. I discussed a partnership return.

Q. Well, did we touch upon that partnership return at all in our discussion?

A. The partnership return under the name of Admay, yes, sir.

Q. All right. And I think you identified for me the six members of that partnership as all being members of the family of the defendant, did you not?

A. I identified six names there as referring to members of the defendant's family, yes, sir.

Q. Well, what is the difference between what I said and you said?



(Testimony of Frank Filice.)

A. You are assuming it is a partnership. I am not ready to assume that.

Mr. Fleming: Your Honor please I think the question is argumentative.

The Court: Objection sustained. Go ahead with the witness.

Mr. Sullivan: May I have the witness' answer stricken, then, if your Honor please?

The Court: Yes, it may go out and the jury is instructed to disregard it. [1894]

Q. (By Mr. Sullivan): Directing your attention to the next item, which is the fifth item down on your exhibit 334—strike that. Directing your attention to the seventh item down, which is property at 1555 Oak Street, Oakland, that is a property that you discussed with me in testimony this morning, is it not? A. It is.

Q. And exhibit 20, the partnership return of income, is filed under the name of May Taam and Janet Chan Lee, is that correct? A. It is.

Q. And May Taam is the daughter of the defendant, is she not? A. That is true.

Q. And Janet Chan Lee is the daughter of the defendant? A. Yes, sir.

Q. Now, going back to the fifth and sixth items, the property at 148 Waverly Place and the property at 8th and Webster Streets, this pertains to property which you identified as being owned by the defendant according to Mr. Wiley's chart, which is exhibit 169 in evidence, have you not?

A. I have.

(Testimony of Frank Filice.)

Q. And do you find that the rental income of that property was reported on exhibit 23, which is the individual income tax return of Alvin Chan, the son of the defendant? A. I do. [1895]

Q. Now, do you find with respect to all of the other of the first seven items that I have just directed your attention to, the income in the first four items and then the item at 1555 Oak Street, do you find that the partnership income which appears in your column "Total" is reported on a return or returns of the taxpayers who are indicated on the partnership return as partners?

A. May I have the question read, please? It is rather lengthy.

Mr. Sullivan: Well, let me——

The Court: Read it, Mr. Reporter.

(Question read.)

A. I find that the income which was reported on those various partnership returns has been reported by a number of individuals whose names appear on the respective partnership returns, yes, sir.

Q. (By Mr. Sullivan): Now, will you kindly add up for me the first seven items on exhibit 334 by adding the column "total"? In other words, give me a total which represents the first seven.

A. \$84,361.70.

Q. Now, if we subtract the eighty-four thousand figure which you have given me from the grand total of your total column figure, what is the



(Testimony of Frank Filice.)

balance? I will do this, and suppose you check it for me, please? [1896]           A. \$38,252.47.

Q. Now, then, beginning at the next to the last item on the first page of exhibit 34, and going down on the second page, the total amount net of money involved there is \$38,252.47, is it not?

A. Yes, it is. As a matter of subtraction, that is correct.

Q. Now, you have included on this chart, have you not, an item in connection with exhibits 186 and 187, introduced by the government, pertaining to the Wai Yuen bonus transactions?

A. I have.

Q. And how much is that?           A. \$25,000.

Q. Subtract the \$25,000 from the \$38,252.47.

A. \$13,252.47.

Q. So is it correct to say that if we place in one classification that portion of your exhibit which deals with the way the family reported its income, and in another classification this item of \$25,000 that is involved in the Wai Yuen bonus problem, what is that on your chart, which is exhibit 334 in evidence, involves only \$13,252.47 net?

A. I would say, without passing on the validity of any assumptions, that mathematically that is a correct result.

Q. Now, let's go back and take these other places that you have on your chart.

Mr. Sullivan: Mr. Fleming, if I do this wrong, will you [1897] please guide me here?

(Testimony of Frank Filice.)

Mr. Fleming: You are referring to the black-board and not the calculations?

Mr. Sullivan: Yes.

Q. Now, let's take the first property which is in line after the first group that I discussed, in other words, the eighth property down on the first page of your list, which is exhibit 334. What do you find to be the address of that property?

A. 159 Waverly Place.

Q. And in your column "Total" what figure have you included as an income figure?

A. \$570.22.

Q. And the next item that you have there is what property? A. 34th and Grove Streets.

Q. And what is the figure you have included in your first column for that property?

A. A loss figure, \$159.99.

Q. I notice that on your chart you have indicated that in parentheses.

A. That is correct.

Q. And that indicates a loss? That is an accountant's way of designating a loss, isn't that correct? A. Either that or red figures.

Q. Yes. Now the next figure, what property is that? [1898] A. 385 Eighth Street, Oakland.

Q. And what figure do you find on your chart?

A. \$2,089.42.

The Court: Pardon me, Mr. Sullivan. Mr. Hubner, do you have a copy of that exhibit?

The Witness: Here is one, your Honor.

(Testimony of Frank Filice.)

Mr. Sullivan: I am sorry, your Honor, I should have given you one.

The Court: Thank you very much.

Q. (By Mr. Sullivan): Now, the next property, what property is that?

A. Hobart and Telegraph, a loss figure, \$1,016.94.

Q. And the next property? [1899]

A. A loss figure.

Q. Oh, I'm sorry.

A. 23rd and Broadway, a loss figure, \$4,761.15.

A loss figure.

Q. And the next figure—the next item, Mr.—

A. Pierce Building, \$247.79.

Q. Now, I will ask you to go down to the next—to the last item and pick up this Lions Den for me. You find a profit figure there?

A. Kwo Hing Wah, the computed figure based on one-half of the total, \$1,864.93.

Q. Now, I wonder if you would be good enough, Mr. Filice, to save time, I know it involves a double addition here, I will give you what we have calculated to be the net figure for all of these profits and losses for the seven properties, and we arrive at the figure of \$1,165.72, and it is a loss figure.

A. I am sorry, Mr. Sullivan, that figure 570.22, it should be, instead of \$572.22.

Q. You go ahead and check that and I will change it.

A. Taking the segment of the exhibit that reflects the figures that you have listed on the black-

(Testimony of Frank Filice.)

board and giving effect to the loss figures as deductions against the income figures, the net result, as computed, is a loss figure of \$1,165.72. [1900]

Q. Now, I will direct your attention to these properties which I have asked you to calculate the net loss for me on; 159 Waverly Street, did you find in examining the evidence that that figure of \$570.22 was reported on the income tax return of Yee Shew Lung? A. I did.

Q. You did not find that it was reported on the tax return of any of the members of the family we discussed in connection with these other properties?

A. No, it was reported on the return of Yee Shew Lung.

Q. 34th and Grove Streets you found reported on the tax return of Yee Shew Lung and not on any member of the family, did you not?

A. That is true.

Q. 385-8th Street, you found reported upon the tax return of Mark Sena and not on any member of the family? A. That is correct, also.

Q. Hobart and Telegraph, a loss, you found the item of loss reported on the tax return of Mark Sena and not on any member of the family?

A. That is also correct.

Q. 23rd and Broadway, with the exception of a sixth reported by Norma Wong Chan, a sixth reported by the defendant on his tax return, you did not find any other portion reported on the tax return of any other member of the family, did [1901] you? Would you like to look at the returns?

(Testimony of Frank Filice.)

A. I would like to see the return of Norma Wong Chan.

Q. First of all I will show you Exhibit 21, which is the partnership return of income, and then Mr. Clerk, may I please have 24? Thank you. Then I will show you the Exhibit 24, Mr. Filice.

A. Mr. Sullivan, my recollection, refreshed by the photostatic copy of the return filed in the name of Norma Wong Chan for the year 1945 is that no part of the loss of \$4,761.15 was reported by either the defendant—will you strike that, please, Mr. Reporter? I made a mistake.

After having my memory refreshed by seeing a photostatic copy of the 1945 return filed under the name of Norma Wong Chan, I can state that no part of the loss of \$4,761.15 reported on Exhibit 21 was reported by any member of the defendant's family except an amount of \$793.52 on the defendant's income tax return and an amount of \$793.52 on the return of Norma Wong Chan, both losses.

Q. Now, the Pierce Building, do you find that one-half of that income is reported on the defendant's Exhibit, 1945 tax return?

A. I do not have the defendant's 1945 tax return before me, but my recollection is that it was reported.

Q. And do you recall from your examination of the exhibits in this case that the balance of the net income of the Pierce [1902] Building was not re-



(Testimony of Frank Filice.)

ported by any other member of the family?

A. Yes, because I recall that it was reported on the return of Evelyn Lee Chang.

Q. And her husband?

A. And her husband.

Q. And referring you to the last property, Kwo Hing Wah, what do you find from your examination of the exhibits in evidence as to whether or not that was reported on any income return of any member of the family?

A. I have no recollection of any of that amount being reported on the returns of any members of the defendant's family.

Q. Now, Mr. Filice, since I have ended up with a loss figure and in order to make the reconciliation to your total up at the top, should I add that \$13,252.47?

A. Mr. Sullivan, you're maneuvering the computation. I don't know what you are driving at, I will leave it up to you.

Q. All right, then suppose you add for me the loss figure to the \$13,250?

A. Add it as a positive figure or as a negative figure?

Q. Add this, don't make what you call an algebraic addition but make an arithmetic addition.

A. Thank you. May I have your chalk please? I believe that's right. [1903]

The Court: Mr. Sullivan, I think you are slipping, making Mr. Filice do all the calculations; you used to do them yourself.

(Testimony of Frank Filice.)

Mr. Sullivan: Well, your Honor, I don't know whether that is due to a lassitude or a resignation of competency.

The Court: Well, it may be.

Q. (By Mr. Sullivan): Mr. Filice, now I will direct your attention to an item which you have on your Exhibit 334 which is headed Wai Lee Company and makes reference to an Exhibit 222 in evidence.

May I have that, Mr. Clerk?

Q. I will show you Exhibit 222 and ask you if this is the document that you referred to when you incorporated this item in your return—in your chart?      A. It is.

Q. Now, will you kindly turn to the reverse side of that document and read for me the amount of partners' shares as indicated on that for the defendant Chin Lim Mow?

A. Chin Lim Mow, \$436.95.

Q. And I will also direct your attention to the next item, which is the Elite Company, and I will ask you to look at Exhibit 270, which I think I have already given you, and I will ask you to refer to Mr. Farley's Chart of the capital contributions in that exhibit and read for me the amount of capital contribution at December 31, 1945, opposite the name [1904] Bock Chan?

A. I find only one item in the 1945 column of \$8,000.

Q. And if it is developed in the evidence that the Elite Company paid a five per cent dividend cal-

(Testimony of Frank Filice.)

culated on that \$8,000 investment, can you tell us how much five per cent of \$8,000 is?

A. You're asking me to make an assumption now as to the payment of the dividends?

Q. Exactly. A. That would be \$400.

Q. Do you have Exhibit 1 before you there?

A. I don't think so, Mr. Sullivan.

Q. Well, you recall, do you not, a reporting of income by the defendant on Exhibit 1?

A. I have it on the chart, \$400.

Q. \$400. Now, the item of the Wai Lee Company and the item of the Elite Company are included, are they not, in this \$14,418.19 figure which I have written on the board?

A. Yes, because we start with the total of 122 and part of that—

Q. And if I—can you give me the total of the Wai Lee Company entry on your first column?

A. \$2,000.

Q. The Elite Company item?

A. \$2,347.97 and \$11,163.32. [1905]

Q. And the total of that I find to be some \$13,511.19. Like to verify that?

A. The last figure should be \$11,163.32 instead of 22, making your total, I believe, 29 cents. I have \$13,511.29.

Q. Now, that total represents the two items we have discussed in this law case involving the reporting of income of the Wai Lee Liquor Company and the Elite Company, is that right? A. Yes.



(Testimony of Frank Filice.)

Q. Now, we have only three items left, have we not, the twenty bank accounts? What do you have opposite that in your total column?

A. \$589.40.

Q. And we have an item of Hing Wah Tai, do we not? A. That is true, \$317.50.

Q. So there are only two items left, is that right? Now, the item there of \$589.50 has come off of a chart which has been prepared after an examination of the ledger accounts at the Bank of Canton, is that correct? A. That is correct.

Q. And that is an item of interest on savings accounts that does not appear on the defendant's tax returns, is that right. A. No, it does not.

Q. Well, in making your calculation did you find any items [1906] of interest to take the same classification that the defendant paid that he didn't claim as a deduction?

A. You mean in the preparation of this chart?

Q. M-hm.

A. This chart was prepared under the instructions of Mr. Fleming and it was limited to the material that he gave me instructions on.

Q. Well, did you in the course of your investigation of this case come upon any items of interest paid out by the defendant which he didn't claim as a deduction on his tax returns?

A. My investigation, and that of Mr. Farley and that of Mr. Freeberg, was concerned principally in

(Testimony of Frank Filice.)

finding the wealth of the defendant and only secondary specific items of deductions that he may or may not have omitted. Therefore, I have no clear recollection of any omitted additions of interest that he may have paid.

Q. Well, let me get you straight. In this chart, which is Exhibit 334, you are not talking about an asset, are you, when you talk about the item of \$589.40?

A. I certainly am, because that was credited to the accounts and it constituted an asset, the accretion of interest was an asset.

Q. It didn't constitute your knowledge of an asset at the end of the year in its present form in this account, did it? [1907]

A. Well, if the interest had not been withdrawn during the year it certainly would have been an asset.

Q. But that would be taken up in another calculation, wouldn't it?

A. That is correct, and as I explained, this particular tabulation was prepared under instructions from Mr. Fleming and as to the material that went on it and the classification that was to be given to the material, I merely acted under instructions.

Q. Well, we have \$14,418.19 of items involved in this lawsuit which we have calculated down from a total of \$122,614.19 and we have those items here that we are talking about, namely, the twenty bank accounts, the Hing Wah Tai, which amount to some \$900, and we have the items over here, the Wai Lee

(Testimony of Frank Filice.)

and the Elite Company which amount to some \$13,500. Do you see those?      A. I do.

Q. Now, one of those items that I just mentioned you have described on your chart, have you not, as income omitted by the defendant, namely, the 20 bank accounts?      A. I have.

Q. My question is: In the course of your investigation did you come across any deductions that the defendant omitted?

A. My answer would have to be the same as the answer that I have already given, Mr. Sullivan. We were concerned primarily [1908] with finding the defendant's wealth and we had difficulty enough tracing specific items on the returns. I have no clear recollection of any omitted item of interest deduction.

Q. Well, I will hand you Exhibit 249 and, Mr. Filice, I will also hand you Exhibit 250 which are the Government's Exhibits in evidence. Now, are you familiar with these documents?      A. I am.

Q. I notice that they are addressed—both certificates, and they are addressed to the special agent; is that you?

A. Well, I presume that it was only a matter of convenience for the delivery in the court room during the first trial.

Q. Was it you?      A. It would be, yes, sir.

Q. What do you mean by "it would be"? Is it or is it not?

A. Well, as a matter of fact, Mr. Sullivan, this is the first time that it has been called to my at-

(Testimony of Frank Filice.)

tention that the term special agent appears on the certificates. I assume it would be me.

Q. You don't know whether that is you or not?

A. Considering that I was the only special agent during the first trial, it would be me—it should be me.

Q. It is you?

The Court: All right, it is. We will assume that.

Q. (By Mr. Sullivan): Now, I will ask you to examine Exhibits [1909] 249 and 250 and tell me whether—strike that.

What do these documents represent? Will you just tell us generally so the ladies and gentlemen will know what we are discussing?

A. Well, the form itself carries the heading of certificate of assessments and payments, and then it has the additional information, income and estimated tax, years indicated below.

Q. Now, do you find that Exhibit 249 pertains to the payments made on account of the tax liability of the defendant?

A. Yes, his name appears on the top, Chin Lim Mow.

Q. And do you find that Exhibit 250 pertains to the payments made by Chin Wong Shee, the defendant's wife?

A. Yes, her name appears on the top of the form.

Q. Now, do you find, by examining 249 and examining 250, that both the defendant and his wife in the years 1943 and 1944 paid interest to the

(Testimony of Frank Filice.)

United States Government amounting to approximately \$26,000?

A. That is true. But I notice further they paid penalties as well.

Mr. Sullivan: I move to strike that, if your Honor please.

The Court: The motion is granted; not responsive to questions. The jury is instructed to disregard it.

Mr. Sullivan: Your Honor, please, I would like to make [1910] an assignment of misconduct against the plaintiff in the case by its agent, the special agent on the stand for making that volunteer statement and I ask, respectfully, that the witness be admonished and the jury be instructed——

The Court: The request will be denied.

The Witness: I am sorry, your Honor.

I do find charges for interest on these forms, yes, sir, Mr. Sullivan.

The Court: Let us take the recess at this time, ladies and gentlemen, and you may consult your associates, Mr. Sullivan. Take the recess for a few minutes, ladies and gentlemen.

Pardon me, we have gotten along a little bit further than I had anticipated and so therefore we will not hold an evening session tonight, but I ask you to hold yourselves in readiness for tomorrow night and possibly Friday night.

I mention this to you now so that you may make any necessary phone calls which you may require, and you may have the facilities of my office outside



(Testimony of Frank Filice.)

to make any necessary calls. We will not have a session tonight.

Mr. Fleming: May I inquire, your Honor, how long you plan to run this afternoon?

The Court: Until 4:30.

(Short recess.) [1911]

Q. (By Mr. Sullivan): Mr. Filice, I will hand you exhibit 7, which is the 1944 return of the defendant, and exhibit 8, which is the 1944 return of his wife, and I will ask you to examine those and tell us if you find on there any deductions for interest paid upon taxes or tax liabilities?

A. The return isn't entirely clear on that score, Mr. Sullivan. I notice that it has a main heading of "Deductions," subheading of "Interest," then one, two, three, four items underneath it. One is labelled "Accounting services," and I assume that could not refer to interest. There is another one labelled "California State Income Taxes." I assume that, likewise, cannot refer to taxes. So I can only assume the interest refers to the first two items.

Q. And what are those two first items?

A. Sun Life Insurance Company, \$450.64, and Manufacturers' Insurance Company, \$264.15.

Q. Yes. My question is, do you find any amount on those returns, exhibits 7 and 8, representing a deduction for interest paid on account of tax liabilities?

A. Federal income taxes?

Q. Yes. A. No, sir.

Q. And I will show you exhibits 5 and 6, being

(Testimony of Frank Filice.)

the 1943 return of Mr. and Mrs. Chan, or Chin Lim Mow and Chin Wong Shee, and I will ask you what, if any, amount do you find taken [1912] as a deduction on those returns for interest paid on tax liabilities during the year 1943?

A. I can't tell from the returns, Mr. Sullivan, because under the main heading of "Deductions" there is one item called "Interest" without any further explanation or designation.

Q. And how much was that? A. \$503.71.

Q. Do you find any other interest payment taken as a deduction besides that amount you have just given me?

A. I do not. Oh, I beg your pardon, there is some interest under the property schedule, but I assume that applies to bank loans.

Q. I shall show you exhibit 242, which is a document introduced here in evidence by Mrs. Evelyn Lee Chang. Do you recall that document?

A. I recall its being introduced in evidence and its being testified to.

Q. I wonder if you would be good enough to read me the first paragraph of that document.

A. "When the United Food Supply Company fell each share lost \$16,062.29, but I put up \$40,000 to the company at that time, which removes my lost share. Mr. Howard Chang owes us \$23,937.71."

Q. Now, I will ask you if you recall Mrs. Chang's testimony in this case to the effect that the United Food Supply Company [1913] was a building that collapsed in 1944? Do you recall that?

(Testimony of Frank Filice.)

A. I believe I recall her testimony, yes, sir.

Q. I will ask you to examine exhibits 7 and 8, being the 1944 returns of Mr. and Mrs. Chan, or Chin Lim Mow and Chin Wong Shee, and tell me if you find on there any deduction in an amount which you have just read to us in connection with the collapse of a building pertaining to the United Food Supply Company?      A. I do not.

Q. Mr. Filice, this morning at the beginning of my questions to you I asked you a number of questions as to whether you had examined the books and records of a number of companies; and so that we may have the names before us I will read them to you again: Tai Sun Company, Western Supply, United Trading Corporation, United Food Supply, Wai Lee Company, Quo Hing Wah, Hing Wah Tai, and American Four. Do you recall those questions?

A. I do.

Q. So that I may have it clear, did to your knowledge either Mr. Freeberg, who was your assistant, or Mr. Farley, the revenue agent who worked with you as a team, examine any of those books?

A. Mr. Freeberg I am sure did not. Mr. Farley may have. Mr. Wiley very likely did.

Mr. Sullivan: No further questions.

### Redirect Examination

By Mr. Fleming:

Q. Mr. Filice, directing your attention to [1914] the items of \$122,614.17 which you added up in



(Testimony of Frank Filice.)

that exhibit, I will ask you what year that refers to?

A. The year 1945.

Q. Now then, you were asked several questions by Mr. Sullivan with respect to interest paid. Those were years—do you remember those questions, the very last question, almost, before the recess?

A. They related to the years 1943 and 1944.

Q. Now, you were also asked about the Admay checks, do you remember that, and the investigation in connection with those checks?

A. Yes, I do.

Q. To the best of your knowledge, who has those checks?

A. W. A. Wallace and Company, with the exception of certain checks that I believe Mr. Wallace testified were delivered to some member of the defense.

Q. Have those checks ever been shown to the government, to your knowledge?

A. No, sir. I have made repeated requests for production of those checks. They were never produced.

Q. Directing your attention now to another subject, do you remember this morning Mr. Sullivan put a series of figures on the board? The first one was \$20,000, do you recall that?

A. Yes, I think I recall the series you have in mind, Mr. Fleming. [1915]

Q. Do you remember the first one was \$20,000?

A. Yes, I do.

(Testimony of Frank Filice.)

Q. Identified by Mr. Sullivan as Admay cash?

A. Yes. They were the checks issued from the Admay Company bank account that were deposited in the personal bank account of the defendant.

Q. Now, I will ask you—I will go over this series of figures again, and I will—now, what was that \$20,000? I mean, what was that supposed to represent?

A. That represented checks drawn and charged to the bank account carried under the name of Admay Company in the amount of \$20,000, which were deposited in the personal bank account of the defendant.

Q. Well, does that represent Admay cash deposited in the bank account of B. H. Chan?

A. Not cash, but checks drawn against that account.

Q. What year?           A. 1945.

Q. So that that figure then represents checks from one bank account to another?

A. That is correct.

Q. Now then, do you recall also being given a figure by Mr. Sullivan of \$10,655.38?

A. Yes, I recall that figure.

Q. What was that figure, will you tell me? [1916]

A. That figure, as I recall it, was the total of a group of figures representing the net income reported on three or four different partnership returns for the year 1945.

Q. Is that a tax return figure?           A. Yes.

Q. Now, those figures you have testified differed

(Testimony of Frank Filice.)

from the amount of money actually paid out from those operations during the year 1945, did they not?

A. May I have the question read? I am not sure that I understand it.

The Court: Read the question, Mr. Reporter.

(Question read.)

A. Yes. There is no—there is no identity between the figure of \$10,655.38 and the money that was actually paid out as a result of those profits reported.

Q. (By Mr. Fleming): Do you recall a third figure of \$4,322.71? Do you recall being given that third figure by Mr. Sullivan? A. Yes, I do.

Q. And what was that figure supposed to represent?

A. That figure, as I recall it, was a total of depreciation allowances claimed as deduction on the various partnership returns that make up the net income figure reported at \$10,655.38.

Q. Is that a bookkeeping figure?

A. Yes, I would say so. It is, however, a deduction allowed by the Internal Revenue office. [1917]

Q. Were those the figures Mr. Wallace testified he calculated on these various returns?

A. I believe Mr. Wallace testified to those figures, yes, sir.

Q. And when you add those up, what do you get?

A. Roughly, \$38,000.

Q. Well—

A. I beg your pardon. Roughly, \$34,800.

(Testimony of Frank Filice.)

Q. Eight hundred seventy-nine dollars and nine cents?      A. That is right.

Q. What does that figure represent?

A. Well, that figure, taken together, really represents an addition of three figures that are dissimilar in character, in my opinion doesn't represent anything.

Mr. Sullivan: May it please the Court, I move to strike out "in my opinion doesn't represent anything."

The Court: Motion is granted. The jury is instructed to disregard what his opinion is.

Q. (By Mr. Fleming): Can you add taxes, income and depreciation and arrive at any logical figure?

Mr. Sullivan: Objected to, if your Honor please, as calling for a conclusion and opinion of the witness.

The Court: Objection overruled.

A. I am testifying as an account and former Internal Revenue agent, and my answer would have to be no.

Q. (By Mr. Fleming): I direct your attention to Admay and [1918] the account 20. You recall yesterday testifying in some detail through analysis, Mr. Filice, of how the money got into the Admay account and how it left the account?      A. Yes.

Q. I will ask you if at my request you summarized or added together the payments from the hotels, four in 1944 and five in 1945, and arrived

(Testimony of Frank Filice.)

at a consolidated figure for those payments into the Admay bank account during those years? Just tell me whether you did that?

A. Yes, I did that under your instructions, Mr. Fleming.

The Court: May I interrupt? I understood you to say that you were testifying as a former revenue agent. Are you presently connected with the Bureau?

A. Yes, but I am not a special agent, your Honor.

The Court: Oh, I see. There was some doubt in my mind when you said a former agent of the Bureau.

A. I was originally commissioned as an Internal Revenue agent and served in that capacity for 13 years, then I was transferred four years ago and have since been designated as a special agent.

The Court: With the Intelligence Unit?

A. Yes.

The Court: And you are so associated now?

A. That is true, your Honor.

The Court: All right. [1919]

Q. (By Mr. Fleming): Before we go back to Admay, will you give me the names—well, I will ask you this: Those four hotels were operated in 1943, 1942, 1941, were they not? Directing your attention to the Sherman Hotel.

A. The papers I have before me, Mr. Fleming, concern themselves only with the years 1944 and 1945. There may have been some changes in

(Testimony of Frank Filice.)

the number of hotels between these two years and the earlier years, 1941 and 1942.

Q. Well, I will show you the Sherman Hotel book.

A. I am sure three of those, however, were in operation in the earlier years.

Q. I will show you exhibit CN and ask you to find the check register for the year 1943, directing your attention to page 36. Do you have that page?

A. Yes, I find the record of checks drawn for the year 1943.

Q. In the month of January, 1943, do you find a check payable to B. H. Chan for \$700?

A. I do.

Q. And directing your attention to the month of February, 1943—fifth of the month—do you find a check payable to B. H. Chan in the amount of \$1,000?

A. I do.

Q. How about the following month, directing your attention to the fourth of the month?

A. I find check No. 819 entered as drawn in favor of B. H. [1920] Chan for \$1,000.

Q. How about the next month, directing your attention to the 5th of the month?

A. I find check No. 88 dated April 5, drawn in favor of B. H. Chan for \$1,000. I beg your pardon, the number is 834, but the amount is \$1,000.

Q. How about May, 1943?

A. May, 1943, I find check No. 847 dated May 1, 1943, in favor of B. H. Chan, \$1,000.

Q. Next month?



(Testimony of Frank Filice.)

A. I find check No. 872 dated June 2, 1943, in favor of B. H. Chan, \$1,000.

Q. Next month?

A. I find check No. 896 dated June 6, 1943, in favor of B. H. Chan, \$700.

Q. And on August 3rd?

A. I find check No. 906 dated August 3rd in favor of B. H. Chan, \$1,000.

Q. How about September?

A. I find check No. 922 dated September 3rd, 1943, in favor of B. H. Chan, \$800.

Q. And October?

A. I find check No. 932, no date, drawn in favor of B. H. Chan, \$800.

Q. November? [1921]

A. I find check No. 946 dated November 3, 1943, drawn in favor of B. H. Chan, \$800.

Q. And December?

A. I find check No. 953 dated December 3, 1943, drawn in favor of B. H. Chan, \$1,200.

Q. Now, did you notice any checks—may I have exhibit 68, please?—did you notice any checks in going through that list in the year 1943 payable to May Taam, Janet Chan, Alvin Chan, Bertha Chan or Norman Chan?

A. I confined my scrutiny to checks payable to B. H. Chan. I will have to examine the record again to answer that question. (Examining record.) May I have the question now read, please.

Q. (By Mr. Fleming): Well, do you find any checks in the year 1943 payable to May Taam, Janet

(Testimony of Frank Filice.)

Chan, Bertha L. Chan, Norma Wong Chan or Norman Chan?      A. I do not.

Q. Do you find that in the year 1943, examining the return in the name of Admay Company, exhibit 68, the Sherman Hotel income was reported on that return, Admay Company?      A. I do.

Q. And what share was reported under the name Chin Lim Mow?      A. One-sixth.

Q. I have added up those figures to \$11,000, is that correct?      A. The figures on the board?

Q. Yes. [1922]

A. \$11,100 is what I get by inspection.

Q. Very well. Now, that was for the year '43. I will direct your attention to exhibit 77, signature card for the Admay bank account, and ask you when, according to that account, the Admay bank account was opened?      A. January 7, 1944.

Q. Now, going back to the Sherman Hotel books, I will ask you to go through the month of—yes, I direct your attention to January 4, 1944, I guess on page 17, and ask you if you find a check for \$1,000 drawn on that date?

A. I do. Check No. 963 drawn in favor of Admay Company, \$1,000.

Q. Who is the payee?

A. Admay Company.

Q. Now, I will direct your attention to the month of February, 1944, and ask if you find a check in the amount of \$800 drawn on February 5?

A. I do. Check No. 972 drawn in favor of Admay Company, \$800.



(Testimony of Frank Filice.)

Q. Will you then go through the rest of the year 1944 and give me the dates and amounts of other checks you find payable to Admay?

A. Check No. 984, March 6, 1944, drawn in favor of Admay Company, \$1,000.

Check No. 996, April 3rd, 1944, drawn in favor of Admay Company, \$1,000. [1923]

Check No. 1009, May 8, 1944, drawn in favor of Admay Company, \$800.

Check No. 1020, dated June 1, 1944, drawn in favor of Admay Company, \$1,000.

Check No. 1029, dated June 26, 1944, drawn in favor of Admay Company, \$1,000.

Check No. 1042, no date, drawn in favor of Admay Company, \$900. It is part of the check register for the month of August, 1944.

Check No. 1052, dated September 2nd, 1944, drawn in favor of Admay Company, \$900.

Check No. 1063, dated October 3, 1944, drawn in favor of Admay Company, \$1,000.

Check No. 1077, dated November 4, 1944, drawn in favor of Admay Company, \$1,000.

Check No. 1086, dated December 2nd, 1944, drawn in favor of Admay Company, \$1,500.

Q. Now, if we add up, we get \$11,900?

A. I have \$11,900 that I previously developed.

Q. Is that all payable to Admay?

A. The check register so indicates, and the checks were deposited in the bank account carried under the name of Admay.

Q. Well, is it correct to say the checks which in

(Testimony of Frank Filice.)

1943 had been made to the name B. H. Chan in the year 1944 were made in the name Admay. [1924]

Mr. Sullivan: I object to that as calling for a conclusion of the witness.

Q. (By Mr. Fleming): According to the books?

Mr. Sullivan: Calling for a conclusion of the witness, assuming something not in evidence; assuming an identity and similarity between the two years.

The Court: I don't know whether you got his amendment to his question?

Mr. Sullivan: Yes, I did, your Honor.

The Court: "According to the books."

Mr. Sullivan: Yes, your Honor. He can quote that, but the witness' conclusion those two payments be the same—

The Court: That is for these twelve men and women good and true to pass on. The objection will be overruled.

Q. (By Mr. Fleming): Well, let me ask you this: Were both sets of payments charged to account 50?           A. Yes.

Q. Let's go back to the question I asked you with respect to the Admay bank account starting in January, 1944. Now, I will ask you if you have added up the source of the deposits from the four hotels in 1944 and arrived at one figure?

A. I have.

Q. And those are what? Admay—what are the names of those four hotels?

(Testimony of Frank Filice.)

A. Alpine Hotel, Sherman Hotel, Mandarin Hotel, Bayshore [1925] Auto Court.

Q. What is the consolidated figure of deposits from those four enterprises in the Admay bank account during the year 1944?

A. \$38,650 even.

Q. And what is the amount of monies going out during the year 1944 to B. H. Chan?

A. \$3,300. [1925A]

Q. And to the John J. Allen trustee account during the year '44, what is the amount going out?

A. \$1,030.75.

Q. And to the Gerdon Land Company?

A. \$30,548.03.

Q. And you had previously testified, have you not, that those were credited to account 20?

**A.** The \$30,548.03, yes, sir.

Q. Now, when you testified under examination by the defense, you were asked whether any funds from these hotels were traceable to the personal bank account of the defendant. You recall being asked that question?           A. I do.

Q. And you replied no, and I believe you were asked the same question again whether or not one penny was traceable to the personal bank account of the defendant, Chin Lim Mow, and you replied no. Do you recall that?

A. Not quite that way, counsel. My recollection is that I was asked were any of the checks issued from the bank account of the various hotels traced

(Testimony of Frank Filice.)

as deposits in the personal bank account of the defendant, and my answer was no.

The Court: May I ask what in the world is that last figure that you have there? I can't read that.

Mr. Fleming: Gerdon Land Company. [1926]

The Court: I don't mean that, the one you wrote under Admay.

Mr. Fleming: Oh, bank account.

The Court: Never know it.

Q. (By Mr. Fleming): Well, now, when you said none of these funds were traceable to the bank account of the defendant, Chin Lim Mow, did you mean in your testimony that none of these funds found their way to his use and benefit?

Mr. Sullivan: Object to that, your Honor, please, on the grounds it calls for a conclusion and opinion of the witness, leading and suggestive in form, the question and answer asked the witness speaks for itself very clearly.

The Court: Will you read the question, Mr. Reporter?

(Question read by the Reporter.)

The Court: Objection will be overruled.

The Witness: I must beg your Honor's pardon, could I have the question read again?

The Court: Will you read it again?

(Question read by the reporter.)

A. I did not. I meant merely that there were no deposits in his personal bank account as such that could be traced directly to the checks issued

(Testimony of Frank Filice.)

from the hotel bank accounts. He may have received considerable benefit through Admay or through credits in Account 20, from the deposits in the Gerdon Land Company, also out of the Admay bank account—— [1927]

Mr. Sullivan: I move to strike——

The Court: The motion is granted, and the jury instructed to disregard the last answer.

Q. (By Mr. Fleming): Now, was it your testimony, then that you found no instance after the year 1943 of Alpine Hotel checks, Sherman Hotel checks, Mandarin Hotel checks, or auto court checks being deposited directly in the bank account of B. H. Chan?

Mr. Sullivan: Object to that as assuming something not in evidence. I didn't interrogate the witness on the '43 transaction.

The Court: Overruled.

Mr. Fleming: Will you read the question?

(Question read by the Reporter.)

A. My recollection is that I found no instance of any checks issued from any of the bank accounts named that were deposited in the personal bank account of the defendant after 1943.

Q. Now, with respect to the year 1945, '45, there were five hotels, and will you give me the consolidated figure of the deposits of checks that went from those hotels into the Admay bank account?

A. Yes, I can.

(Testimony of Frank Filice.)

Q. What was the total?

A. \$53,150. [1928]

Q. Does that figure you have given me represent checks of these five hotels deposited in the Admay bank account during the year 1945?

A. It does.

Mr. Fleming: May I have Exhibit 122 please?

Q. Now, during that year did you find any checks going out of the Admay bank account payable to B. H. Chan? A. I did.

Q. And will you give me the dates and the amounts of those checks?

Mr. Sullivan: We object to this as already asked and answered, if your Honor please, this testimony—

The Court: Let him answer it again.

A. Check dated January 24, cleared at the bank on January 24, \$18,500.

Q. (By Mr. Fleming): Now, with respect to that check I will ask you if you find an item deposited in the account, the bank account of B. H. Chan, dated January 29, 1945, \$18,500?

A. I do.

Q. Do you find that that check was originally presented on January 24, 1945? A. I do.

Q. Now, with respect to the year 1945 then when you testified that not one penny of the money from these hotels [1929] was traceable to the personal bank account of the defendant, Chin Lim Mow, was it your testimony that none of such money ulti-



(Testimony of Frank Filice.)

mately was deposited in the bank account of the defendant, Chin Lim Mow?

Mr. Sullivan: Object to that, if your Honor please, upon the grounds the testimony speaks for itself, it is in the record as being what it is, that the question calls for a conclusion and opinion of the witness.

The Court: Overruled.

Mr. Fleming: Will you read the question?

(Question read by the Reporter.)

A. No, it is not.

Q. (By Mr. Fleming): What do you mean then by your answer?

Mr. Sullivan: Same objection, if your Honor please.

The Court: Same ruling, overruled.

A. I had in mind in my original testimony specific checks from one bank account traceable as deposits in another. The question is put to me now, I believe I am certain I can answer this way, that of the \$53,150 that was deposited in this account, consisted of checks drawn from the hotel bank accounts, \$18,500 found its way into the personal bank account of the defendant.

Mr. Sullivan: Object to that, if your Honor please, move to strike it, upon the grounds it is a conclusion and opinion of the witness, the witness has really invaded the [1930] province of the jury and has drawn a conclusion that the money over here is the same amount of money that is over

(Testimony of Frank Filice.)

here, there being no tangible evidence in this record it is the identical money.

The Court: Overruled. The motion is denied.

Q. (By Mr. Fleming): Was your previous testimony then with respect to the year 1945 limited to the fact that you found no checks of these five hotels deposited directly in the bank account of B. H. Chan?

A. That is true, it was limited to that extent.

Q. Now, 1945 is the year in which you had the two missing checks in the total of \$26,000, is it not?

A. That is correct.

Q. And how much did you trace to the Gerdon Land Company in the year 1945?

A. Directly?

Q. From Admay, Admay checks to Gerdon Land Company?

A. That is directly consisting of specific checks that I saw and examined the endorsement on, \$29,912.26; indirectly consisted of two checks that were never presented to me, the sum of \$8,227.99, the total, \$38,140.25.

Mr. Sullivan: I move to strike the witness' answer beginning with the word "indirectly" upon the grounds it is an opinion and conclusion of the witness.

The Court: Motion denied. [1931]

Mr. Sullivan: Invades the province of the jury.

The Court: Motion denied.

Q. (By Mr. Fleming): You have previously

(Testimony of Frank Filice.)

testified, have you not, that that money was credited to account 20?      A. I have.

Mr. Sullivan: Objected to as leading and suggestive.

The Court: Overruled.

Q. (By Mr. Fleming): Now, then, to summarize your testimony to date, you have identified Admay checks in the year 1944 going to Gerdon Land Company in the amount of \$30,548.03, and in the year 1945 in the sum of \$38,140.25 which were credited to account 20?

A. That is correct.

Q. Now, let us turn to account 20, please, and showing you the transcript of the ledger of that account 20 I will ask you first of all to give me the balance in that account beginning of the period we have been discussing, that is to say, the end of '43?

Mr. Sullivan: If your Honor please, I object to this line of testimony upon the following grounds: It has already been thoroughly explored by counsel. This is the very line of testimony on this so-called flow of money theory of counsel's that your Honor foreclosed counsel from examining the witness on yesterday.

The Court: I am inclined to go along with the objection. [1932]

Mr. Fleming, would you like to be heard upon that objection? I think that subject has been quite fully developed.

Mr. Fleming: Your Honor, this goes to the testimony of the witness that not one penny of the

(Testimony of Frank Filice.)

moneys from these hotels was traceable to the personal bank account of Chin Lim Mow.

The Court: That has already been testified to.

Mr. Fleming: And this line of inquiry goes to the indirect tracing of the money through these various accounts to the personal account of the defendant, Chin Lim Mow, and to the witness' answer that his answer was limited solely to a direct transmittal.

The Court: The objection will be sustained on the ground it is repetitive.

Mr. Fleming: I would like to develop a slightly different aspect of this, your Honor, which will be very brief.

Q. Now, the balance at the end of 1943 as compared with the end of 1944 in account 20——

Mr. Sullivan: Object to that, your Honor, same objection.

Q. (By Mr. Fleming): ——find an increase or a decrease?

Mr. Sullivan: Same objection, if your Honor please.

The Court: Overruled.

A. I find an increase.

Q. (By Mr. Fleming): Does that indicate that during the [1933] year 1944 more money went into account 20 than went out of it, money or credits?

A. More money and things that are valuable went into that account than were charged to the account, yes, sir.

(Testimony of Frank Filice.)

Q. I will put down the 1944 under account 20, increase.

Now, how about comparing the end of '44 with the end of 1945 and tell me whether that account increased or decreased?

A. I find that the account decreased.

Q. That means that during the year 1945 more money or credits or other items of value went into the account than went out of the account?

A. That is correct.

Q. Now, will you compare 1945 with the end of 1946 and tell me what you find?

A. I find that the amount decreased.

Q. Now, I will use colored chalk for the year 1946, and, finally, will you compare the end of 1946 with the end of 1947 and tell me whether during that period of time you found an increase or a decrease?

A. I find a decrease.

Q. Now, you will recall these six checks that I heretofore showed you. I will ask you if you found that all of those checks payable to B. H. Chan and Chin Hing were drawn during the years '46 and 1947? [1934]

Mr. Sullivan: Objected to, your Honor please; that is the very testimony your Honor ruled on yesterday.

The Court: Objection sustained.

Q. (By Mr. Fleming): Mr. Sullivan asked if you looked at the books and records of the American-4 Company. Do you know where those books and records are located?

(Testimony of Frank Filice.)

A. I haven't the slightest idea.

Q. What type of operation is that, can you tell me?  
A. I haven't the slightest idea.

Q. Did you look at the records of the Chin Company at Emeryville?  
A. No, sir.

Q. What type of operation is that, can you tell me?  
A. I have no idea.

Q. Showing you at this time Exhibit 335 for identification, I will ask you if you can identify those as cancelled checks, Hogan & Vest checks, written during the years '44, 1945?

A. Yes, I can.

Q. And what do those payments purport to represent?

A. They are payments made to payees as indicated on the checks out of the rents collected by the real estate agents, Hogan & Vest, from various of the properties as shown on these sheets, namely, 723 Grant, 870-874 Washington, 870-874 Washington again, and 723 Grant. [1935]

Mr. Fleming: Offered in evidence, if the Court please, as Government's Exhibit 335.

The Court: Be received and marked.

The Clerk: Government's Exhibit 335 in evidence.

(Thereupon U. S. Exhibit No. 335 for identification was received in evidence.)

Mr. Fleming: No further questions, your Honor.

Mr. Sullivan: No questions, your Honor.

The Court: You may be excused, or adjourn to your seat.

The Witness: Thank you, your Honor.

(Witness excused.)



Mr. Fleming: The Government will call Mr. Brady.

AUGUSTUS V. BRADY

called by the Government, sworn.

The Clerk: Will you please state your name and occupation to the Court and Jury?

A. Augustus V. Brady.

Direct Examination

By Mr. Fleming:

Q. And what is your address, Mr. Brady?

A. 2522-44th Avenue, San Francisco.

Q. By whom are you employed?

A. Bureau of Internal Revenue.

Q. How long have you been with the Bureau of Internal [1936] Revenue?

A. Oh, I have been approximately 27 years.

Q. In what capacities have you been associated with the Bureau?

A. Past five years I have been assigned to the Penal Division as a technical adviser. Prior to that time I was with the Internal Revenue Agent's office, served as an internal revenue agent for approximately 22 years.

Q. Now, what is your profession?

A. Accountant.

Q. And what are your qualifications as an accountant?

A. Well, going back to my schooling?

Q. Please.

A. I attended New York University for some

(Testimony of Augustus V. Brady.)

time, and then I took numerous correspondence courses issued by the Bureau, and also by Pace & Pace Accounting School, New York.

Q. And have you heretofore qualified as a public accountant?           A. Yes, I have.

Q. Have you on prior occasions testified as a witness in the United States District Court?

A. Yes, I have, sir.

Q. Have you on prior occasions been qualified as an expert in the field of accounting in these courts?           A. Yes, sir, I have.

Q. Did you work on the investigation of the taxes of the [1937] defendant, Chin Lim Mow?

A. No, I did not.

Q. Have you, however, been either in attendance at the trial and read the transcript of the testimony of the proceedings in this court since September 8th?           A. Yes, sir, I have.

Mr. Fleming: Now, I will ask at this time that there be marked as Government's Exhibit next in order a document headed computation of tax.

The Clerk: 336 for identification.

(Thereupon document referred to was marked U. S. Exhibit No. 336 for identification only.)

Q. (By Mr. Fleming): Now, Mr. Brady, we have had some discussion with respect to the progressive nature of taxation, and I will show you Government's Exhibit 336 for identification and ask you if at my request you made certain calcula-

(Testimony of Augustus V. Brady.)

tions designed to show the progressive nature of income taxation?      A. Yes, I have.

Q. Do you also have in front of you Exhibit 65, or a copy, being the instructions for the income tax form for the year 1945?      A. Yes, I have.

Q. Have you then for illustrative purposes made a computation of the tax on the form of \$60,-576.13 in two different manners?

A. I have on the \$69,576.13. [1938]

Q. And where did you secure that figure?

A. I believe that figure came from the Exhibit 13, which was the income for the Admay return—

Q. The return for the year 1945?      A. Yes.

Q. Now, did I first ask you to calculate the tax on that figure broken down as between two people, that is, husband and wife?      A. Yes, you did.

Q. And did you do so taking standard deductions in making that calculation?

A. Yes, sir, I did.

The Court: By the way, do you have an extra copy of that so that I can follow it?

Mr. Fleming: Yes, your Honor.

I will offer in evidence the computation for illustrative purposes heretofore marked as Government's Exhibit next in order.

The Clerk: 336.

Mr. Sullivan: Objected to, if your Honor please, upon the grounds that this exhibit represents assumptions and predicates of fact which are not in evidence.

(Testimony of Augustus V. Brady.)

The Court: I am inclined to admit it so the Jury may have the benefit of the computations therein contained. They are the exclusive judges of the facts in the case. [1939]

The Clerk: Exhibit 336 in evidence.

(Thereupon U. S. Exhibit No. 336 for identification only was received in evidence.)

Q. (By Mr. Fleming): Now, in making computation of tax payable on this figure did you first calculate, did you first of all limit your calculations solely to this amount in calculating the reported income? A. Yes.

Q. Did you first calculate what the tax would be as reported by two people, husband and wife? A. Yes.

Q. Now, what was the total tax payable in accordance with that calculation?

A. \$32,271.76. Want me to explain how I got that, Mr. Fleming?

Q. No. Now, did you subsequently take the same amount of income, that is, \$69,576.13, and calculate it as reported by three married couples and three single persons?

A. Using the standard deduction, yes, I did.

Q. Well, when you calculated the tax that way—I will put down here eight people—what was the amount of the tax? A. \$16,701.63.

Q. How do you account for the difference?

Mr. Sullivan: Objected to, if your Honor please,

(Testimony of Augustus V. Brady.)

calling for a conclusion and opinion of the [1940] witness.

The Court: Overruled.

A. The difference is between \$32,271.76 and \$16,701.63, I have, is \$15,570.13. Asked how, what accounted for the difference?

Q. (By Mr. Fleming): Yes.

A. Because the rate of surtax is higher on dividing the income by two rather than dividing it by eight people.

Q. And does that rate progress as the income grows larger?

Mr. Sullivan: Objected to as calling for a legal opinion.

The Court: Overruled.

A. Yes.

Q. (By Mr. Fleming): Now, will you examine Exhibit 65—I believe you told me you have a copy in front of you there? A. Yes.

Q. And tell me what the surtax rates are on an income of \$10,000?

A. The surtax on \$10,000—

Q. Well, I will reframe my question. On the amounts in excess of \$10,000. A. All right.

Q. What is the surtax rate?

A. Well, it would be \$2,640 plus 39 per cent of the excess over \$10,000. [1941]

Q. The excess over \$10,000 is what per cent?

A. 38 per cent.

Q. Now, will you tell me what the surtax rate is on the excess over \$50,000?

(Testimony of Augustus V. Brady.)

Mr. Sullivan: Now, your Honor, I object to this testimony as extremely cumulative and repetitive, this very testimony was gone into by counsel with Mr. Wiley, the former Government agent. It was not something which your Honor was including upon the admission of Exhibit 336. The document which counsel has in his hands is the very document he held when he questioned Agent Wiley. I submit that in the interests of time as well as upon the basis of my objection that counsel should not be permitted to ask these questions again.

Mr. Fleming: I only have two more questions, your Honor.

The Court: Overruled.

Q. (By Mr. Fleming): What is the rate on the excess over \$50,000?

A. 75 per cent of the excess over \$50,000.

Q. 78 per cent? A. 75 per cent.

Q. Now, what figure do you find on the excess over \$100,000?

A. 89 per cent of the excess over \$100,000.

Q. And finally I will ask you what figure you find on the excess over \$200,000?

A. 91 per cent of the excess over \$200,000. [1942]

The Court: Just translate that for us into terms which we can all understand.

The Witness: All right. Well, your Honor, as the income increases the rate of surtax increases. For instance, if a person had an income of, say, \$11,000, the excess over \$10,000 would be 38 per cent.



(Testimony of Augustus V. Brady.)

If he had an income of, subject to surtax, of \$51,000, the excess over \$50,000 would be at 75 per cent.

If he had an income of \$101,000, the excess over \$100,000 would be taxed at 89 per cent. And if he had an income in excess of \$200,000, subject to surtax, that is, after the exemption, would be at 91 per cent. So it is a graduate rate based upon the income.

Q. (By Mr. Fleming): Is there additionally a normal tax in addition to the surtax?

A. Yes, a normal tax of 3 per cent is constant, regardless of the amount.

Q. Add 3 per cent to all those figures?

A. Yes, that is not at a graduated rate as surtax is.

Q. I will ask you at my direction and under my instructions you have prepared certain charts and tabulations based on the evidence in this trial?

A. Yes, I have. [1943]

Q. And did you at my direction make certain calculations and additions and subtractions based on the data given in that treatment?

A. Yes, I have.

Q. Before we go into that data, I wonder if you can tell me what is meant by the net worth method of calculation of income?

Mr. Sullivan: I object to that question, if your Honor please, insofar as the answer calls for net worth as a legal conception as distinguished from an accountancy technique, upon the ground that the

(Testimony of Augustus V. Brady.)

net worth principle is established by the decisions of the Federal Court is made a legal criteria. If the question goes to that, it calls for the witness' legal opinion and conclusion.

The Court: This man is qualified as an expert without objection from you and without questioning him as to his qualifications, so therefore I am inclined to disallow your objection and overrule it. I think this jury would be very much interested in knowing what the net worth basis of computing tax is.

Mr. Sullivan: My objection not only went to this question, as I thought I made clear, your Honor, if the subsequent testimony is not going to be regarding any legal criteria.

The Court: Yes. I am glad you called my attention to that. In other words, his testimony as to what constitutes net worth, ladies and gentlemen, you will regard for what it may [1944] be worth. I will have occasion to instruct you upon that subject and you will take the instructions from me. But you may listen to this expert's testimony and give it the credit to which you think it is entitled. Does that satisfy you?

Mr. Sullivan: Yes, your Honor, that is exactly my position.

A. May I proceed, your Honor?

The Court: Yes.

A. Well, net worth represents the amount that a person owes at any particular date. For instance, say at December 31st 1944, a man may be worth

(Testimony of Augustus V. Brady.)

\$1000. That would represent his actual net equity in all assets, minus all liabilities. That is what he is worth, so we call it a net worth. At the end of, say, 1945, he was worth \$5,000——

Q. (By Mr. Fleming): Well, if we could stop there, then net worth is merely a fancy phrase saying how rich or how poor somebody is at a given moment, isn't that it?

A. That term could be applied, yes.

Q. How do you calculate income——

The Court: Well, let's pursue that a little further. In other words, on the basis of the \$1000 situation that you used——

A. Net equity, yes.

The Court: That is free of all encumbrances and liabilities? [1945]

A. Yes.

The Court: Debts?

A. Yes.

The Court: Every kind and character?

A. That is right.

The Court: That is what he owns?

A. That is what he owns. In other words, his house, it may be worth \$9,000. If he owes \$8,000 on it and that is the only asset he has, \$1000 represents his net worth.

The Court: Very good.

Q. (By Mr. Fleming): Do you, then, take what he owns and subtract his debts and arrive at a balance you call net worth? A. Yes.

Q. How do you calculate income based on net worth? But before you answer that question, let

(Testimony of Augustus V. Brady.)

me ask you, in what circumstances do you use the method of net worth to calculate income?

A. The net worth method has been used by the government in numerous cases where the books and records are inadequate to make a proper determination of his income.

Q. Very well. Now, will you tell me how you make the calculation?

A. Well, we would take the net worth at the beginning and end of the period. Say the period would be one year between 1944 and 1945, usually at December 31st. [1946]

Q. Net worth, then, say, at the end of 1944?

A. Yes.

Q. And the net worth at the end of 1945?

A. Yes. Usually at a particular date such as December 31st.

Q. Then what do you do?

A. Then we get the either increase or decrease.

Q. Now, assuming there is an increase, what do you do next?

A. Well, to the increase in net worth we would take into consideration any non-taxable income. For instance, if he sold some property and it was a long term capital gain in which 50 per cent will be recognized as non-taxable income, we would take that into consideration. Or if he received an income which we consider as non-taxable source like personal injury or various classifications of non-taxable income, that would be taken into consideration.

Also, we would take into account any non-taxable

(Testimony of Augustus V. Brady.)

—any non-deductible items such as life insurance, premiums paid, federal income taxes paid, possibly any penalties paid, things of that nature. Oh, yes, and assuming there were no gifts.

Q. Well, Mr. Brady—

The Court: Pardon me, Mr. Fleming. Are gifts taxable?

A. No, not to the recipient, your Honor.

The Court: Not to the recipient?

A. No.

The Court: But to the giver they are? [1947]

A. To the person that makes the gift, he is supposed to file a gift tax return. Not subject to income tax, however.

The Court: Not subject to income tax?

A. Not the principal, no.

The Court: I am not going to give anything away, that is not the purpose of the questions.

Q. (By Mr. Fleming): In the example you have given, suppose a man has a net worth at the end of 1944 of \$1,000 and at the end of 1945 of \$10,000, will you tell me how you calculate income on the net worth basis from those figures?

A. Well, we consider the increase in net worth is \$9,000.

Q. What do you do with that?

A. Well, we would have to analyze the increase in net worth, Mr. Fleming, to see that there were no gifts, no non-taxable income involved.

Q. Assume that is so?

A. Assuming no gifts and no non-taxable income,



(Testimony of Augustus V. Brady.)

his increase in net worth would be \$9,000, to which we would add any non-deductible items such as federal income taxes paid, life insurance premiums paid, and items of that nature.

Q. And how would you calculate the income?

A. Well, we would add to the increase in net worth these non-deductible items, arrive at the taxable income.

Q. Well, now, in this case, and in the absence of any of the complicating factors which you have mentioned, do you [1948] calculate an income of at least \$9000 in that particular case?

A. I would like to have that question read, please.

The Court: Read it, Mr. Reporter.

(Question read.)

A. Yes, assuming there was no non-taxable income and no non-deductible items, that would be \$9,000 would be his income.

Q. (By Mr. Fleming): And to that would you add his living expenses for the year?

A. Well, the living expenses would be an addition. That would be considered as non-deductible item, which you said assuming there were none. But naturally there would be some personal living expenses that would be added to the increase in net worth. In other words, the money had to come in to go out.

The Court: All right, this might be an appro-



(Testimony of Augustus V. Brady.)

priate time to take an adjournment, ladies and gentlemen. It has been a long day.

Mr. Fleming: If your Honor please, I have a number of exhibits which Mr. Sullivan would probably like to look at. If I could have them marked now, I could furnish him copies.

Mr. Sullivan: Yes, your Honor. I would like to thank counsel for that consideration. We are running against time.

Mr. Fleming: I would like to ask that there be marked for identification a document headed "Summary net worth as of [1949] December 31, 1941."

The Clerk: Government's exhibit 337 for identification.

(Whereupon document referred to above was marked Government's Exhibit 337 for identification.)

Mr. Fleming: A document headed "Detail of Miscellaneous Deposits" as government's exhibit 338 for identification.

The Clerk: Government's exhibit 338 for identification.

(Whereupon document referred to above was marked Government's Exhibit 338 for identification.)

Mr. Fleming: A document 280 for identification, headed "Advances to Wilbur S. Pierce."

The Clerk: Government's exhibit 280 for identification.

(Testimony of Augustus V. Brady.)

(Whereupon document referred to above was marked Government's exhibit 280 for identification.)

Mr. Fleming: Document 281 for identification, headed "Investment in Wai Yuen Club."

The Clerk: Government's exhibit 281 for identification.

(Whereupon document referred to above was marked Government's exhibit 281 for identification.)

Mr. Fleming: A document 282 for identification, headed "Investment in Wai Lee Liquor Store."

The Clerk: Government's exhibit 282 for identification.

(Whereupon document referred to above was marked Government's exhibit 282 for identification.)

Mr. Fleming: A document "net worth statement as of [1950] December 31, 1944 to 1945," as government's exhibit 339 for identification.

The Clerk: Government's exhibit 339 for identification.

(Whereupon document referred to was marked government's exhibit 339 for identification.)

Mr. Fleming: As Government's exhibit 286 for identification, document headed "Details of sales in capital assets."

(Testimony of Augustus V. Brady.)

The Clerk: Government's exhibit 286 for identification.

(Whereupon document referred to above was marked Government's Exhibit 286 for identification.)

Mr. Fleming: As Government's exhibit 340, document headed "Understatement of income based on increase in net worth 1942-1944."

The Clerk: Government's exhibit 344 for identification.

(Whereupon document referred to above was marked Government's exhibit 344 for identification.)

Mr. Fleming: As Government's exhibit 341 for identification, a document headed "Details of fines paid and forfeitures."

The Clerk: Government's exhibit 341 for identification.

(Whereupon document referred to above was marked Government's exhibit 341 for identification.)

Mr. Fleming: As Government's exhibit 287 for identification, a document headed—pardon me, government's exhibit 342, headed "Understatement of income based on increase in net worth year [1951] 1945."

The Clerk: Government's exhibit 342 for identification.

(Testimony of Augustus V. Brady.)

(Whereupon document referred to above was marked Government's exhibit 342 for identification.)

Mr. Fleming: As Government's exhibit 343 for identification a document headed "Schedule of federal income taxes reported on returns for Chin Lim Mow's family for 1945."

The Clerk: Government's exhibit 343 for identification.

(Whereupon document referred to above was marked Government's Exhibit 343 for identification.)

Mr. Fleming: And as government's exhibit 344 for identification, a document headed "Chin Lim Mow's taxable year ended December 31, 1945."

The Clerk: Government's exhibit 344 for identification.

(Whereupon document referred to above was marked Government's exhibit 344 for identification.)

Mr. Fleming: I believe that is all, your Honor. I will furnish copies to Mr. Sullivan.

The Court: All right. Ladies and gentlemen, you have been very patient and I commend you for it. I trust your patience will endure until I conclude this case at the end of this week.

We will adjourn now until tomorrow morning at 9:30. Please remember that—9:30, during which

(Testimony of Augustus V. Brady.)

time, of course, you are admonished again not to talk about the case among yourselves or with others, and not to form or express any opinion concerning [1952] it until it is finally submitted to you. Tomorrow morning at 9:30.

(Thereupon this cause was adjourned to Thursday, October 9, 1952, at the hour of 9:30 a.m.) [1952A]

October 9, 1952—9:30 A.M.

The Clerk: United States of America vs. **Chin Lim Mow**.

Mr. Fleming: Ready, your Honor.

Mr. Sullivan: Ready, your Honor.

The Court: You may proceed.

### AUGUSTUS V. BRADY

was recalled as a witness on behalf of the Government, previously sworn:

#### Direct Examination

(Continued)

By Mr. Fleming:

Q. Mr. Brady, yesterday we were explaining the net worth method of calculating income. Could you briefly summarize that explanation for us?

A. Yes. As I mentioned, the net worth represents an item or an amount of the man's worth at a particular time, that is, his assets minus his liabilities, net equity in property and assets of all kinds.

(Testimony of Augustus V. Brady.)

We take the net worth at the beginning and end of a certain period, usually one year; for instance, beginning and end of, well, 1945; and we determine whether there is an increase or decrease in his net worth.

Assuming there was an increase in net worth, we would add to that his personal living expenses. Also, we would add non-deductible items and subtract from that non-taxable income [1953] to arrive at the net taxable income for the period. In other words, what he has accumulated, plus items that had been expended that would not show up in his net worth. Is that clear, Mr. Fleming?

Q. Well, first you started with his increase in wealth?      A. Right.

Q. And do you add the expenses which you have been able to identify during the period concerned?

A. That is right.

Q. And then do you calculate the sum of those two figures as income, in the absence of other factors?

A. In the absence of any non-taxable income, I would say yes.

Q. I direct your attention to Exhibit 337, for identification, a chart headed "Summary of net worth as of December 31, 1941, Chin Lim Mow." Do you have a copy of that?      A. Yes.

Q. Did you prepare that at my direction and at my request?      A. Yes, sir, I did.

Q. Is the data which you have summarized in



(Testimony of Augustus V. Brady.)

that chart data which you secured from evidence given at this trial?           A. Yes.

Mr. Fleming: Offered in evidence, if the Court please, as Government's Exhibit 337.

Mr. Sullivan: I would like to make an objection, if your Honor please. If your Honor please, we object to the offer in [1954] evidence upon the following grounds: first, the introduction of this exhibit—and I will in probable objection to probable offers of additional exhibits make the same objection—introduction of this exhibit, I submit, lays a foundation for improper examination of the witness who is on the stand for this reason, that Mr. Brady is produced as an expert and the only way to examine an expert is through the medium of hypothetical questions; and if this exhibit is introduced in evidence, Mr. Brady will merely perform the simple function of a reader rather than to answer the proper questions as an expert does through the medium of hypothetical questions.

I submit further that the method of examination is improper in that it is prejudicial. And I submit it is prejudicial because this method of examination will permit the Government witness, Mr. Brady being a Government employee, to draw his own inferences from the testimony and thus to invade the province of the jury.

Thirdly, I submit that this method of examination is improper in character in that it is not a proper examination of a witness in a criminal case, in that through the media of witnesses such as Mr. Brady it

(Testimony of Augustus V. Brady.)

permits the Government to argue the case twice, once through the testimony or spoken word of the witness and at the conclusion of the case by the spoken word of the prosecutor.

With respect to the subject matter of the document, your [1955] Honor, I object upon the grounds that the document is improper and should not be admitted because it is based upon assumptions of fact or inferences from facts which are not in evidence.

And for the foregoing reasons, if your Honor please, I submit the general objection, therefore, that this document which is offered is incompetent, irrelevant and immaterial, prejudicial, and basis for improper examination of the witness.

Mr. Fleming: This document, if the Court please, is offered as a summary of the Government's case, and to explain and illuminate to the jury the mass of data which we have presented here in the last four weeks.

This method has been approved by the Circuit Courts and by the United States Supreme Court. I will direct your Honor's attention to the Schenk case in the Second Circuit, the Gendelman case in this Circuit, and the case of United States against Johnson in the Supreme Court, all of which upheld such method of presentation.

The Court: Objection will be overruled.

The Clerk: Government's Exhibit 337, in evidence.

(Testimony of Augustus V. Brady.)

(Document previously marked Government's Exhibit 337 for identification was admitted into evidence.)

Mr. Fleming: I have copies of this exhibit which I would like to present to the Court and to the jury in order that they may follow the particular chart (handing document to the Court and jury). [1956]

Q. (By Mr. Fleming): Now, Mr. Brady, what is this chart?

A. This chart is a summary of the net worth as of December 31st, 1941.

Q. And what have you attempted to do in this chart?

A. On this chart we attempted to determine the adjusted net worth as of December 31st, 1941.

Q. And do you do that by listing all the assets and liabilities?

A. Yes, in accordance with your instructions and, I would say, based on certain exhibits that have been introduced in evidence during the trial.

Q. What is the date under which you have made this document headed "Summary of Net Worth"?

A. The December 31st, 1941?

Q. Yes. Now, I will direct your attention to the items the first eight items on the chart—first nine items, and ask you the source of that information?

A. The first nine items is shown on Exhibit 58, which was the summary of net worth December 31, 1941, submitted by Chin Lim Mow.

Q. Who signed Exhibit 58?

(Testimony of Augustus V. Brady.)

A. Chin Lim Mow.

Q. Is that notarized?

A. Yes, it is. "Subscribed and sworn to before me this—Oakland, California, 20th day of April, 1942, Ruby Overton, [1957] Notary Public in and for the County of Alameda, State of California."

Q. Will you read the certification on Exhibit 58, please?

A. "I hereby certify this is a full, true and complete statement of my net worth as of December 31, 1941. "Signed, Chin Lim Mow."

Q. What is the total of assets listed on Exhibit 58? A. \$264,861.69.

Q. Have you then taken that figure and put it on this chart, together with the nine items submitted by Chin Lim Mow on December 31, 1941, going to make up that figure? A. Yes, sir, I have.

Q. Exhibit 58, also, does it not, purport to cover the period December 31, 1941?

A. Yes, it is a summary of net worth December 31, 1941.

Q. Now, to that figure of \$264,861.69 have you made certain additions and subtractions?

A. Yes, sir, I have.

Q. Now, will you look down to where on the extreme lefthand column you find the notation "Add deposit with Collector of I-n-t.," do you find the item?

A. Yes, that is Collector of Internal Revenue.

Q. Will you tell me what that item is?

(Testimony of Augustus V. Brady.)

A. Deposit with the Collector of Internal Revenue \$50,000, and I believe Lister Allen testified to that on page 655 of [1958] the transcript.

Q. Have you added that sum to the net worth of Chin Lim Mow as of December 31, 1941?

A. Yes, sir, I have.

Q. Will you go to the next item and tell me what that is?

A. That is surrender value of life insurance \$46,088.50.

Q. Have you added that item to your list of assets of Chin Lim Mow as of December 31, 1941?

A. Yes, sir, I have.

Q. What is your next item?

A. Real estate adjustments, items not included in above net worth of \$264,861.69. That included property known as No. 23, located in Santa Cruz Chinatown. According to the testimony of Mr. H. Heiner, and I believe that is Exhibit 264, we have a cost of \$14,113.40, less a loan outstanding as of December 31, 1941, of \$3,428.01, leaving net equity of \$10,685.39.

Property No. 22——

Q. Well, just a minute. Did you at my direction include the property at Santa Cruz under the heading "Defendant's assets as of December 31, 1941"?

A. Yes, sir, I did.

Q. Do you find that property listed in Exhibit 58, the Chin Lim Mow statement of December 31, 1941?

A. No, sir, I do not.

Q. Have you, accordingly, added the value of



(Testimony of Augustus V. Brady.)

that property [1959] to the assets of the defendant as of December 31, 1941?

A. Yes, sir, I have.

Q. And can you tell me, is that the same property which was identified by the witness Mark Sena as having been purchased in his name?

A. I believe so.

Q. Now, will you go to the next item under the heading "Property 22"?

A. Property 22 is the west side of San Pablo and 55th Street, acquired 1940 (see Exhibit 63, which is the 1946 return), \$6200. Loan on property, which was stipulated to, of \$1,810.34. Depreciation at December 31, 1941, \$67.50. Leaving a net equity in that property of \$4,322.16.

Q. Is that property which was not listed on Exhibit 58, Chin Lim Mow summary of net worth as of December 31, 1941?

A. The cost is not shown on the schedule of real estate, equity in real estate, on Exhibit 58.

Q. Did you accordingly add that to the list of assets of the defendant, Chin Lim Mow, as at December 31, 1941?

A. Yes, sir, I did.

Q. Will you give me the third item you have?

A. Property number 20, Clay and Grant Avenue, San Francisco, according to the testimony of William Wallace this property was transferred to Gerdon Land Company on June 30, 1942. Cost \$53,750. There was a loan from the Anglo Bank, [1960] which was stipulated, of \$27,852.73; and there was



(Testimony of Augustus V. Brady.)

another loan, W. S. Barton, \$15,000, leaving a net equity of \$10,897.27.

Q. Well, can you identify this property as that which has been testified to had been purchased in the name of, I believe, George Oliver?

A. I believe that is the property.

Q. You say transferred to Gerdon Land Company in 1942? From whom was it transferred?

A. Well, I think the records of the Gerdon Land Company, that chart entry will have to be referred to, Mr. Fleming.

Q. Do you recall that that was property which was testified to by the witness Hogan?

A. I have a reference here that Mr. Wallace testified in that regard.

Q. You don't recall Mr. Hogan's testimony on that subject?

A. He may have. I don't just recall right this minute. [1961]

Q. Did you at my direction include this property among the assets in the schedule, Chin Lim Mow, December 31, 1941? A. Yes, sir I did.

Q. And did you add that on to the total?

A. Yes, sir, I did.

Q. And is this property not shown in Exhibit 58?

A. No, it is not listed on Exhibit 58.

Q. Now, you have next an item which you call "Add adjustment to Gerdon Land Company, \$86,285.36." What is the source of that figure?

(Testimony of Augustus V. Brady.)

A. That was taken from the books of the Gerdon Land Company, Account 20.

Q. And have you substituted that figure for the second figure, equity in Gerdon real estate, \$108,099.93?

A. Yes. I might explain that, if I may, Mr. Fleming. On the net worth submitted by Mr. Chin Lim Mow in the Exhibit 58 he had equity in Gerdon Land real estate of \$108,099.93, and in this computation we eliminate that \$108,099.93 and substitute in place of that the balance shown on the Account 20 of the Gerdon Land Company as of December 31, 1941, of \$86,285.36.

Q. Did you do that at my direction and request?

A. Yes, sir, I did.

Q. Did you also add an item \$5,000, Yosemite Club property?      A. Yes, sir, I did.

Q. And did you also add an item \$6,000 adjustment in connection with Anglo Bank loan? [1962]

A. Yes, sir, I did.

Q. Now, I notice next an adjustment, minus adjustment in Gerdon Land Company, \$22,000, June 30, 1942, which applies to December 31, 1941. Will you explain what that item represents?

A. According to your instructions there was an adjustment put on the books Gerdon Land Company June 30, 1942, which applies to December 31, 1941. So arriving at an adjusted net worth of December 31, 1941, we took that \$22,000 into account.

Q. Does that in fact list the check for \$22,000 from the Gerdon Land Company to the John J.

(Testimony of Augustus V. Brady.)

Allen, Jr., trustee account at December, 1941?

A. I would say yes.

Q. And was that check not charged against Account 20 until June, 1942?

A. That is the reason for this adjustment.

Q. And finally I will ask you about the item less life insurance loans, and ask you what is the source of that?

A. That amount was stipulated to.

Q. Does that represent— A. A liability.

Q. A liability of Chin Lim Mow?

A. Yes, sir, it does.

Q. What is that, money he owes to the life insurance companies, or what?

A. Money he borrowed from life insurance. [1963]

Q. Now, have you then made the additions and subtractions which you have testified to and applied them to this figure in Exhibit 258 of \$264,000 and some-odd dollars? A. Yes, sir, I have.

Q. And what figure do you arrive at?

A. \$323,225.94.

Q. And what do you call that?

A. Adjusted net worth.

Q. As of what date?

A. December 31, 1941.

Q. I will write it up on the board. Chin Lim Mow net worth. Now, I will ask you if you have made a calculation of the net worth Chin Lim Mow as of December 31, 1944. A. Yes, sir, I have.

(Testimony of Augustus V. Brady.)

Q. And did you also make a calculation of net worth as of December 31, 1945?

A. Yes, sir, I have.

Q. And have you at my direction and at my request prepared certain charts setting forth that calculation under my supervision and direction?

A. Yes, sir, I have.

Q. And is Exhibit 339 for identification the calculations which you have prepared?

A. Yes, I have.

Mr. Fleming: I will offer the exhibit in evidence at [1964] this time, if the Court please.

Mr. Sullivan: Your Honor please, I will object to the introduction in evidence of the exhibit, basing my objection on as well as the grounds that I have heretofore indicated to your Honor in connection with Exhibit 337, if your Honor will accept the objection in that form without the necessity of my restating it. However, I understand that this—that in order for me to do it that way, your Honor?

The Court: Yes.

Mr. Sullivan: However, on this exhibit, your Honor, I further elaborate upon the objection by stating that not only is this exhibit based upon assumptions of facts not in evidence, but it contains statements in the exhibit directly contrary to the evidence and I respectfully suggest to your Honor that in the interests of time and rather than have this exhibit go in with a vitiating factor in it, I would appreciate the opportunity of pointing those out to your Honor. I think it might have to be done

(Testimony of Augustus V. Brady.)

in the absence of the jury, but I have closely examined the record, and I find, I am convinced that on several of these items here not only has Mr. Brady put down items which are based upon assumptions of facts not in evidence, but items which are directly contrary to the evidence, and I don't know under what principle of law or upon what precedent, even in the cases which counsel mentioned, that that could be tolerated in a criminal case. [1965]

The Court: I am inclined to admit in in evidence. I will overrule your objection. You may develop it if you see fit on cross-examination.

The Clerk: Government's Exhibit 339 in evidence.

(Thereupon charts identified above were received in evidence and marked U. S. Exhibit No. 339.)

Mr. Fleming: I have copies of this exhibit for the jury.

Mr. Sullivan: And may I also enter the objection, your Honor, so it will be of record, to all of the testimony of the witness upon the same grounds that it is not the proper examination of the witness and the other grounds that I indicated which he may from time to time give in connection with this exhibit, even though he may not be reading from the exhibit, I notice that some of Mr. Fleming's questions called for answers of the witness which incorporated material from a source outside of the



(Testimony of Augustus V. Brady.)

exhibit, so I will not have to interrupt counsel, may I have that objection of record also?

The Court: The record will show your objection and its continuing character.

(Counsel for the Government passed copies of the Exhibit to the jury.)

Q. (By Mr. Fleming): Now, what is the title of this chart, Mr. Brady?

A. This is net worth as at December 31, 1944, and December 31, 1945. [1966]

Q. Now, have you set your figures for the two years in the column headed 1944 and the column headed 1945? A. Yes, sir, I have.

Q. And does this chart likewise purport to represent a tabulation prepared under my direction and at my request of the assets and the liabilities of Chin Lim Mow on the date indicated?

A. Yes, sir.

Q. What is the first item you have on the assets schedule?

A. Cash in bank and on hand. A separate schedule on that, a separate schedule for the detail of cash.

Q. Do you have that schedule with you?

A. Yes, sir, I do.

Q. May I have it, please? The schedule you referred to.

A. Yes. (Passing paper to counsel.)

Mr. Fleming: I will ask that this be marked



(Testimony of Augustus V. Brady.)

Government's Exhibit Next in order for identification.

The Court: It may be so received and marked.

The Clerk: Government's Exhibit 345 for identification.

(Thereupon document identified above was marked U. S. Exhibit No. 345 for identification.)

Q. (By Mr. Fleming): And is this document you gave me Exhibit 345 for identification the separate schedule which you just referred to?

A. Yes, a detail of cash. [1967]

Mr. Fleming: Offered in evidence, if the Court please, as Government's Exhibit 345.

Mr. Sullivan: Same objection, if your Honor please, that we have heretofore made to Exhibit 337, and by stating it in that manner, your Honor, without reiterating all the grounds?

The Court: Yes, it may be. The objection will be overruled, received in evidence.

The Clerk: Government's Exhibit 345 in evidence.

(Thereupon document previously marked U. S. Exhibit No. 345 for identification was received in evidence.)

Q. (By Mr. Fleming): Now, what are the figures you have for cash in bank and on hand at the end of 1944 and at the end of 1945?

A. The total, December 31, 1944, \$127,947.31; December 31, 1945, \$144,030.91.

(Testimony of Augustus V. Brady.)

Q. Now, will you explain, and directing your attention to the year 1944, the first eleven items which you have used to make up that figure of \$127,000 and some odd dollars?

A. That represents the bank balances which have been stipulated to during the trial.

Q. Will you give us the names of the banks and the names in which those accounts were carried? Could you do that by referring to Exhibit 345?

A. American Trust Company, Emeryville Branch, Chin Sue Ngor and Wong Ying. Balance— [1968]

Q. Don't give us the balances, just the names and the account.

A. The American Trust Company, Broadway Branch, Oakland, Wong Ying and Bertha Chan. Bank of America, Oakland Main Office, Wong Ying and Bertha Chan. Bank of Canton, B. H. Chan and Wong Wing. Bank of America, Oriental Branch, Commercial Account, B. H. Chan.

Bank of Canton, San Francisco, commercial account, B. H. Chan, and Ying Wong Chan. American Trust Company, Broadway office, Oakland, John J. Allen, Jr., trustee account. Bank of Canton, commercial account, Admay Company. American Trust Company, Emeryville Branch, Wong Ying Chan, marked Chin in parentheses.

Farmers and Merchants Savings Bank in Oakland, Wong Ying, May Sue Chan, Janet Chan. Farmers and Merchants Savings Bank, Oakland, Wong Toy, Wong Ying, Raffaelli. I guess that's all.

(Testimony of Augustus V. Brady.)

Q. Have you then taken the balances as shown by the stipulation in those accounts as of the end of 1944 and the end of 1945 and added them up and included them as part of this first figure?

A. Yes, sir, I have.

Q. Now, directing your attention to the year 1944, what other figure did you include?

A. We also included the Bank of Canton 20 savings accounts opened in 1944 from Exhibits 125 to 144, and added the accumulated interest December 31, 1944, interest making a total [1969] of \$100,650.

Q. Were those the savings accounts \$5,000 each and in 20 different names? A. Yes, sir.

Q. And have you to those two items added a third item called cash on hand?

A. Yes, I have.

Q. And how much was that?

A. \$14,346.85, cash on hand used to purchase Property 34, January 4, 1945, according to the testimony of Mr. Corbett on page 290.

Q. Was that the testimony that \$14,346.85 in currency had been used on January 4, 1945?

A. I believe that is correct.

Q. Deposits on certain real property?

A. I believe that's correct.

Q. Now, did you then add up those three figures and secure the total of \$127,947.31, the first figure on your chart for the year 1944?

A. Yes, sir.

Q. Now, your figure of 1945, will you indicate

(Testimony of Augustus V. Brady.)

the first eleven items going to make up that figure?

A. Well, American Trust Company——

Q. Don't read them. I will ask you if those are the same bank accounts you just read? [1970]

A. Yes, sir.

Q. Did you take the balances as indicated in the stipulation? A. Yes, sir.

Q. Now, then what is the next item which you have included?

A. Pacific National Bank, San Francisco, commercial account, Howard and Evelyn Lee Chang, trustee, going to the testimony of Mr. Clark, \$17,500.

Q. Did you take the balance shown in that bank account as of December 31, 1945? A. Yes.

Q. The next item?

A. Bank of Canton, the bank accounts we refer to in 1944 were still open at the end of 1945.

Q. Referring here to the 20 savings accounts as we have previously identified them? A. Yes.

Q. And the final item?

A. The final item shows a cash on hand, a deposit January 3, 1946, in the Pacific National Bank, Exhibit 234, of \$70,000, making a total of \$144,030.91.

Q. Was that the deposit identified by the witness Evelyn Lee Chang? A. Yes.

Q. What was the date of that deposit?

A. January 3, 1946. [1971]

Q. Have you in your chart included—was that the deposit in currency?

A. The best of my recollection.

Q. Don't recall the exhibit——

(Testimony of Augustus V. Brady.)

A. Testified to that, yes.

Q. Have you included that \$70,000 in currency as cash on hand as of December 31, 1945?

A. Yes, I have.

Q. Now, the total of those figures then is how much?

A. 1944, \$127,947.31; 1945, \$144,030.91.

Q. Now, I will direct your attention to the next item, Account 20, Gerdon Land Company, Exhibit 56, and ask you what are the figures you have there for 1944 and for 1945?

A. December 31, 1944, we have \$248,143.43; 1945, \$319,105.51.

Q. Now, I will show you the books, Account 20, and I will direct your attention to an entry December 31, 1946, in Account 20, and ask you if you will read that item?

A. December 31, 1946, account 8th and Webster Street per the journal, \$12,535.68.

Q. You find the journal for December 31, 1946, referring to that same item?

A. Yes, sir, I do.

Q. And will you read me the descriptive matter?

A. Real estate number 18, 8th and Webster Street, \$12,535.68 is debited and accounts payable is credited with the same [1972] amount, and the explanation, "To agree with the Revenue Agent's valuation."

Q. What property does that relate to, can you tell me by referring to that exhibit?

A. Exhibit — Property 18, 8th and Webster Streets.



(Testimony of Augustus V. Brady.)

Q. Yes. Now, have you then at my direction and at my request taken a figure which you have just read and added it on to the balance shown in Account 20 as of the end of 1944 and the end of 1945?

A. I see here, Mr. Fleming, I have added \$12,536.68. That \$1 at this moment I can't explain it, probably was an error on my part in putting a 6 instead of a 5; \$1 difference there.

Mr. Fleming: Will you read the question?

(Question read by the Reporter.)

Q. (By Mr. Fleming): Did you add those on in the Account 20 balance?

A. Yes, but I inadvertently made a mistake of \$1. I added it as \$12,536.68.

Q. With the exception of that \$1 did you add that figure on to the Account 20 balance?

A. Yes, sir, I did.

Q. And with the result of—did it then result in the figures which you have included in this chart under Account 20?      A. Yes, sir, I have.

Q. Now, I will direct your attention to the next item on [1973] your chart and ask you can you tell me what that item is?

A. Miscellaneous deposits.

Q. And showing you Exhibit 338 for identification I will ask you if this is a breakdown of miscellaneous deposits prepared at my request and under my direction of figures which have gone into the net worth statement?      A. Yes, sir, it is.



(Testimony of Augustus V. Brady.)

Mr. Fleming: Offer in evidence, if the Court please, as Government's Exhibit 338.

Mr. Sullivan: Same objection, if your Honor please; may we state it without reiterating all the grounds, the same way? The same objection we made to Exhibit 337 we make to this exhibit.

The Court: Same ruling. The objection will be overruled, it will be received in evidence.

The Clerk: 338 in evidence.

(Thereupon document identified above was received in evidence and marked U. S. Exhibit No. 338.)

Mr. Sullivan: May we have the same objection continuing your Honor please, with respect to the witness' testimony?

The Court: The record will reflect that.

Q. (By Mr. Fleming): Now, you have included miscellaneous deposits under 1944 of \$26,000. Will you give me the breakdown on that, please?

A. Yes. Detail of miscellaneous deposits. That's 11-6-44, [1974] a deposit on property 29, Hobart, and Telegraph, testimony of Mr. Ogilvie, page 699, \$2500.

11/14/44, deposit on property 29, Hobart and Telegraph, Mr. Ogilvie, \$12,500.

Q. Now, in that connection, are you referring to the two checks of Mr. Ogilvie he testified he delivered, I believe in November and December, 1944, to the Hibernia Bank for the purchase of that property?

A. That is the testimony.

Q. Very well.

(Testimony of Augustus V. Brady.)

A. December 14, 1944, deposit on property 30, 23rd and Broadway, Mr. Ogilvie, page 703, \$5,000.

Deposited on Property No. 34 of 1555 Oak Street, I believe Mr. Corbett on page 290, \$500.

11-13-45——

Q. Pardon me. Just give me the 1944.

A. All right. Deposit 18th and 20 Waverly Place, Mr. Hogan on page 592, \$500.

Q. Was that the deposit Mr. Hogan entered in his books under the name of Evelyn Lee Chang?

A. Yes, sir, deposit on Mandarin Theater. Mr. Hogan testified to that on page 579, 580 and 585, \$5,000, making a total of \$26,000.

Q. Now, you have given a total for all deposits at the end of 1945 of \$22,000. Will you indicate the breakdown of that item? [1975]

A. Yes. November 13, 1945, deposit on property, 5,000 Broadway, also known as the Quarry, Mr. Ogilvie at page 710, of \$12,500. Deposit on liquor purchase—I believe that is what you read, Mr. Deasy's, \$4500.

Q. Pardon me, on the previous transaction, \$12,500——

A. Yes.

Q. ——is that what you are referring to now, to the Evelyn Lee Chang purchase of the cashier's check for \$12,500 and its subsequent deposit to the Pacific States Bank?

A. Yes.

Q. Now, will you give me the net item, please?

A. Deposit on liquor purchase, I believe that is what you read from Mr. Deasy's testimony in the first trial, \$4,500.

(Testimony of Augustus V. Brady.)

Deposit on Mandarin Theater, Mr. Hogan, \$5,000 making a total of \$22,000.

Q. Now, on that last item you have referred to the testimony of Mr. Hogan that he was given \$9,000 in currency by Chin Lim Mow and at the end of the year he still had \$5,000 of that currency in his safe deposit box?

A. I believe that is the testimony, yes, sir.

Q. Now, what is the next item you have on your chart? A. Next is government bonds.

Q. And the amounts?

A. December 31, 1944, \$56.25; December 31, 1945, \$6,056.25.

Q. And what was the source of that information? [1976]

A. I believe Mr. Filice testified and you submitted an exhibit, No. 274, giving the detail of the bonds which were held in the name of the defendant and his wife which information, I believe, was secured from the Bureau of Public Debt.

Q. Now, will you go to the next item, please, and tell me what that item represents?

A. May I have a ruler please? It is easier to follow these down.

The next item I have is claim against the Wilbur Pierce—I believe Mr. Farley testified on that, and I believe you have Exhibit 257, balance December 31, 1944, \$17,509.47; balance December 31, 1945, \$20,935.07.

Q. Now, showing you Exhibit 280 for identification I will ask you if that is a tabulation of the

(Testimony of Augustus V. Brady.)

breakdown of those items prepared at my direction and request?      A. Yes, sir.

Mr. Fleming: Offered in evidence, if the Court please, as Government's Exhibit—

Mr. Sullivan: Same objection, your Honor please, that we have heretofore made with respect to Exhibits 337, 338 and 342. May we state it that way, your Honor, without reiterating the grounds?

The Court: Very well. The objection will be overruled.

Mr. Sullivan: My objection also goes to the testimony of the witness in this connection. [1977]

The Court: The record will reflect that.

The Clerk: Government's Exhibit 280 in evidence.

(Thereupon document referred to above was received in evidence and marked Government's Exhibit No. 280.)

Q. (By Mr. Fleming): Now, the next item, please, Mr. Brady?

A. American Distilling Company stock. I believe Mr. Wiley testified to that, and also shown in Exhibit 10, which is the 1947 return? Or '46 return?

Q. I believe it is the '47 return.

A. '47 return showing the cost of \$61,000.

Q. Is that Chin Lim Mow's return, you recall?

A. Yes, sir.

Q. What figure there have you included?

A. \$61,000 for 1944 and 1945.

Q. Will you go to the next item please?

(Testimony of Augustus V. Brady.)

A. The Wai Yuen Club.

Q. And what figures did you include there?

A. \$22,081.55, December 31, 1944, and \$37,658.19 balance December 31, 1945.

Q. I will show you Exhibit 281 and ask you if that is a chart you prepared at my direction and request and under my supervision indicating investment in the Wai Yuen Club?      A. Yes, sir.

Mr. Fleming: Offer in evidence, if the Court please, as Government's Exhibit 281. [1978]

Mr. Sullivan: Same objection, if your Honor please, heretofore entered to Exhibits 337, 388 and 342.

The Court: Same ruling; objection will be overruled.

Mr. Sullivan: Same objection with reference to the testimony.

The Court: Same ruling.

The Clerk: 281 in evidence.

(Thereupon the document identified above was received in evidence and marked U. S. Exhibit No. 281.)

Q. (By Mr. Fleming): Now, did you on Exhibit 281 take the case as shown in the Bank of America Chinatown branch and the outstanding checks and the redeposited so-called bonus checks and make a tabulation which you have labeled "Adjusted bank balance"?      A. Yes, sir, I have.

Q. Now, what figure do you have for 1944 and for 1945?



(Testimony of Augustus V. Brady.)

A. 1945 I have an overdraft—1944 I have an overdraft of \$742.46, as the adjusted balance December 31, 1945, \$1,133.90.

Q. Did you, in taking the cash on hand as of December 31, 1944, make an error in your figures?

A. Yes, I believe the Exhibit 185 shows a transcript of the bank account, was shown as \$5,789.96 instead of \$5,989.96. However, I did not make this adjustment, because the schedules [1979] had been photostated and the error would have been—the adjustment would have been in favor of the—by making the adjustment it would be against the Government, so leaving it this way it was favorable to the defense.

Q. Now—— A. Instead of \$200.

Q. What are the other items you have included at my direction, and investment of the Wai Yuen Club? What were the titles of those?

A. Deposit on lease, furniture and fixtures, less reserve for depreciation. Building less reserve for depreciation. [1980]

Q. From what source did you obtain those figures? A. Exhibit 186.

Q. What is that? Well, is that Exhibit 186 a balance sheet identified by the witness David Shew?

A. Yes.

Q. By adding those amounts, did you arrive at the totals shown in your chart for the year end—end of the year 1944 and end of the year 1945?

A. Yes, I did.



(Testimony of Augustus V. Brady.)

Q. What is the next item you have included in the schedule of assets?

A. Tai Sun Company, and I have a reference to Exhibit 58, which was the sworn statement of Mr. Chin Lim Mow.

Q. What figure do you give there?

A. \$1,000 at the beginning and end of the period.

Q. Are those the figures you found in the defendant's sworn statement, Exhibit 58?

A. Tai Sun Company? I have it marked Exhibit 58 here, Mr. Fleming, but I believe Mr. Wiley testified on that. That reference I have here could be an error of \$1,000, but——

Q. You refer, then, to Mr. Wiley's testimony?

A. Yes.

Q. What is the next item which you have included?

A. Western Supply Company, and Mr. Wiley testified to that, investment of \$500 beginning and end of the period. [1981]

Q. And the next item?

A. United Trading Company, and Evelyn Lee Chang testified. I think it is Exhibit 242. We used a balance, December 31, 1944, and 1945 of \$10,000.

Q. Your next item?

A. United Food Supply Company. Evelyn Lee Chang, Exhibit 242, \$23,937.71, December 31st, 1944. \$23,937.71, 1945.

Q. Your next item?

A. Wai Lee Company. There is a separate schedule on that.

(Testimony of Augustus V. Brady.)

Q. Showing you Exhibit 282, document headed "Investment in Wai Lee Company, liquor store," I will ask you if that is a separate schedule that you prepared at my direction and request?

A. Yes, sir.

Mr. Fleming: Offered in evidence, if the Court please, as Government's Exhibit 282.

Mr. Sullivan: Same objection, if your Honor please, we have heretofore entered with respect to Exhibit 337. May we state it that way?

The Court: You may, and the objection will be overruled. It will be admitted into evidence.

The Clerk: Government's Exhibit 282 in evidence.

(Thereupon document referred to was received in evidence and marked U. S. Exhibit No. 282.)

The Court: I think we will take the recess at this time, [1982] since we started at 9:30 this morning. Take a recess for a few minutes, ladies and gentlemen.

(Short recess.)

Q. (By Mr. Fleming): Mr. Brady, I believe the last figure which you mentioned was the Wai Lee Company; and I will ask you what items you used to make up the figures which you have given for the years 1944 and 1945?

A. December 31, 1944, \$5,641.56. December 31, 1945, \$12,834.11.

(Testimony of Augustus V. Brady.)

Q. What items did you include to make up those figures? I will show you Exhibit 282.

A. We used the cash on hand and in bank, Exhibit 212, December 31st, 1944, of \$1,220.96; December 31st, 1945, \$7,107.94; inventory, Exhibit 212, December 31, 1944, \$4,449.72; December 31, 1945, \$5,762.41.

My total as to December 31st, 1944, is \$5,567.68. Total assets, December 31st, 1945, \$12,870.35, minus sales tax, Exhibit 212, \$29.12, December 31, 1944; \$36.24, December 31, 1945; leaving a net worth December 31, 1944, of \$5,641.56; December 31st, 1945, \$12,834.11.

Q. Now, I will direct your attention to the next five items, and ask you if you will give me the source of the figures that you included there for the Mandarin Hotel, Sherman Hotel, Alpine Hotel, Bayshore Auto Court and San Fran Hotel? [1983]

A. Exhibit No.—

Q. I don't want the exhibit. Just tell me what the source is? Well, let me ask you this: Can you identify those as balance sheets prepared by the witness Farley? A. Yes, sir.

Q. Will you turn to the next item, Elite Company, and tell me the figure which you have used there for the end of 1944 and end of 1945?

A. Balance December 31st, 1944, \$53,630 even. Balance December 31, 1945, \$43,800.

Q. Have you taken those figures from an exhibit heretofore prepared and introduced in evidence by the witness Farley? A. Yes.

(Testimony of Augustus V. Brady.)

Q. I direct your attention to the next item, Pierce Building, and will you give me the figure that you used for that item?

A. Pierce Building balance, December 31, 1944, \$45,622.41.

Q. Where did you get that figure?

A. I believe that is Exhibit 316, and also Mr. Wallace's testimony.

Q. Well, by Exhibit 316, are you referring to the Pierce Company books, introduced in evidence?

A. Yes, sir, I believe that is it.

Q. What is the figure you have used for the end of 1945?           A. \$45,283.43.

Q. Will you tell me how you made that calculation? [1984]

A. Yes, sir. I believe we used the balance per books, and there was an adjustment of \$3,591, that was marked "Accounts receivable," that we offset this advance to reduce this figure to \$45,283.43.

Q. Well, did you in effect take the net worth as shown by the books, and from it subtract the amounts the books indicated on this account owed to the Pierce Building?           A. Yes, sir.

Q. How about the next item? Give me the figure you have for that.

A. Real estate holdings?

Q. Yes.

A. Separate schedule, Exhibit 264. Balance December 31st, 1944, \$278,475.43. Balance December 31st, 1945, \$565,228.94.

(Testimony of Augustus V. Brady.)

Q. And did you in that refer to schedule identified by the witness Farley, tabulation of profits?

A. Yes, sir; I did.

Q. The next item?

A. Western Department Stores stock. Balance December 31st, 1944, \$3,420.97.

Q. Where did you get that item?

A. That cost was shown on the Exhibit 1 of the 1945 return. That stock was sold.

Q. By Exhibit 1, you refer to Chin Lim Mow's tax return for 1945? [1985]

A. Yes, sir.

Q. Will you give me the next item, please?

A. Bock Hing Trading Corporation, balance December 31, 1945, \$3,848.45.

Q. Did you derive that from Exhibit 223, being a balance sheet filed with the Corporation Commissions, dated, I believe, October, 1945?

A. Yes, sir.

Q. Now, the next items: Watsonville, Bakersfield, Alviso, Yosemite Club, Hollywood Club, 3600 San Pablo, Emeryville, the Palms, and an item, "Bank Roll," cash for above clubs; what figure have you included for that item?

A. \$50,000.

Q. And what does that represent?

A. Well, that would be the moneys used to operate the clubs, known as the Bank Roll.

Q. Are you referring to gambling, now?

A. Yes, sir.

Q. Now, I see you have a reference here, "Overstreet." To what do you refer in that? What did you refer to at that time?



(Testimony of Augustus V. Brady.)

A. Mr. Overstreet was the police officer that testified that he picked up some \$43,000 in the raid and there was several thousand dollars that they did not pick up, so——

Q. (Interposing): Have you then at my direction included [1986] the figure of \$50,000 as bank roll for all the defendant's gambling clubs?

A. Yes, sir; I have.

Q. And have you taken a constant figure at the beginning and end of the year, 1945?

A. Yes, sir; I have.

Q. Now, I will direct your attention to the next item and ask you to give me the figure you have used for that item?

A. The Lions Den? Balance December 31, 1944, \$25,000. Balance December 31, 1945, \$25,000.

Q. And from what source did you derive those figures?

A. The 1947 return, I believe Exhibit 283, shows a cost of that property when it was disposed of, \$25,000 for his interest.

Q. Give me the next item, please.

A. Cash surrender value of life insurance, balance December 31, 1944, \$26,771.54; balance December 31, 1945, \$31,664.43.

Q. And the next item under assets?

A. One-eighth interest in Mandarin Theater. Balance December 31, 1944, \$10,500; balance December 31, 1945, \$10,500.

Q. Now, did you total up the total assets?

A. Yes, sir.



(Testimony of Augustus V. Brady.)

Q. What is that figure? [1987]

A. Balance December 31, 1944, \$1,050,255.02; balance December 31st, 1945, \$1,449,727.82.

Q. Now, I direct your attention to figures under "liabilities" and ask you to give me the first item there.

A. Real estate loans, balance December 31, 1944, \$112,449.76; balance December 31st, 1945, \$265,066.71.

Q. And the next item?

A. Loans on life insurance, balance December 31, 1944, \$18,703.40; balance December 31, 1945, \$20,021.68.

Q. And the next item?

A. Reserve for depreciation. Balance December 31, 1944, \$32,628.49; balance December 31, 1945, \$44,484.39.

Q. And the last item?

A. Hogan & Vest loan. I believe Mr. Hogan testified, page 587, there was \$5,000 outstanding at December 31, 1945.

Q. Now, what are the figures you have for total liabilities?

A. Total liabilities, December 31st, 1944, \$163,781.65; balance December 31st, 1945, \$334,572.78.

Q. Finally, what are the figures you have for net worth for the year 1944, end of 1944?

A. Net worth December 31st, 1944, \$886,473.37.

Q. December 31st, 1944, \$886,473.37?

A. Yes.

(Testimony of Augustus V. Brady.)

Q. And what was the figure you had for the end of 1945? A. \$1,115,155.04. [1988]

Q. Now, have you at my direction and request made a computation of "Understatement of income based on increase in net worth" for the period 1942 to 1944, inclusive? A. Yes, sir; I have.

Q. And showing you Exhibit 340, for identification, I will ask you if that is the computation you made? A. Yes, sir; it is.

Mr. Fleming: Offer it in evidence, if your Honor please, as Government's Exhibit 340.

Mr. Sullivan: Same objection, if your Honor please, we have heretofore entered to Exhibit 337. May we have it that way, without reiterating the grounds?

The Court: The record will reflect your objection, and it will be overruled and the exhibit will be received in evidence.

The Clerk: Government's Exhibit 340 in evidence.

(Thereupon computation referred to was marked U. S. Exhibit No. 340 in evidence.)

Mr. Fleming: I have copies of it for the members of the jury and the Court. Is there any member of the jury who doesn't have a copy?

Q. (By Mr. Fleming): Directing your attention to Exhibit 340, I will ask you, first, what is all of the title you have got?

A. "Understatement of income based on increase in net worth plus non-deductible expenditures and

(Testimony of Augustus V. Brady.)

minus [1989] non-taxable income, 1942 to 1944, inclusive.”

Q. Is this a calculation of income based on the net worth method as you described yesterday?

A. Yes, sir.

Q. What are the first two items?

A. The first two items, net worth at December 31st, 1941. Do you want the amount?

Q. No.

A. The net worth at December 31st, 1944.

Q. Are they the same two items which I have written on the board, which we went through in those two previous charts? A. Yes, sir.

Q. What did you do with those items?

A. Well, I took the difference between the period 1941 and 1944, and I arrived at an increase in net worth of \$563,247.43.

Q. Now then, will you tell us the next item you have, which starts with “Add”?

A. Add Federal income taxes and penalties paid in 1942 to 1944, inclusive.

Q. What is the total for that?

A. Total income, taxes paid by Mr. Chin and his wife, including penalties, \$177,922.81.

Q. Now, why did you add that? [1990]

A. Because that is a non-deductible item for income tax purposes.

Q. Does that represent moneys spent by him during the period 1942 to 1944?

A. That is correct.

Q. What is the next item?

(Testimony of Augustus V. Brady.)

A. Life insurance premiums paid 1942 to 1944, inclusive. That also is an expenditure which is not deductible for tax purposes.

Q. Does that represent moneys spent by Chin Lim Mow during the period 1942 to 1944?

A. Yes, sir.

Q. Did you add that? A. Yes, I did.

Q. What is the next item?

A. Fines paid the United States Government in 1943 per Exhibit 255, \$10,023.75.

Q. Does that, too, represent moneys spent by Chin Lim Mow during the period 1942 to 1944, inclusive? A. Yes, it does.

Q. And did you add that? A. Yes, I did.

Q. What is the next item?

A. Personal living expenses.

Q. What did you include for that? [1991]

A. That, we included nothing.

Q. Now, if you should be able to determine the amount he has spent for living expenses, would it have been proper under the net worth theory to add the entire living expenses to this calculation?

A. Yes, sir.

Q. Now, what is the total which you have put down of those items which you have just given us?

A. \$769,149.59.

Q. Now then, I notice you have two items here under the heading "Less." Will you give us those items and those amounts, please?

A. Yes. Non-taxable portion of capital gains as reflected on 1944 return, Exhibit 7, of \$3,416.54.

(Testimony of Augustus V. Brady.)

Q. And from whose return did you secure that figure?      A. The defendant's.

Q. Chin Lim Mow's return?      A. Yes.

Q. Next?

A. Increase in cash surrender value of life insurance, \$13,823.03.

Q. And have you then subtracted those items from the figure which you have previously given us?

A. Yes, I have.

Q. With what result? [1992]

A. Arrived at taxable net income on the net worth basis of \$751,910.02.

Q. Now, this covers the period of what years, please?      A. 1942 to 1944, inclusive.

Q. In those three years, under the calculations you have made, what did you determine was the total income of Chin Lim Mow during that period?

A. \$751,910.02.

Q. Did you examine the tax returns of the defendant, Chin Lim Mow and Chin Wong Shee, to determine how much income he had reported on his tax returns during that three-year period?

A. Yes, sir.

Q. And what is the figure?

A. A hundred ninety-two thousand——

Q. This is the figure of income reported on tax returns?

A. Tax returns of husband and wife.

Q. How much?      A. \$192,407.25.

Q. Did you then by subtracting the amount of income actually reported from the total income ar-

(Testimony of Augustus V. Brady.)

rive at a figure of unreported income for this three-year period?      A. Yes, I did.

Q. And how much was that?

A. \$559,502.77. [1993]

Q. \$559,502.77?      A. That's right.

Q. Did you make a similar calculation, understatement of income, for the year 1945?

A. Yes, sir; I did.

Q. And I will show you Exhibit 342, for identification, and ask you if that is the calculation you made for the year 1945?      A. Yes, it is.

Mr. Fleming: Offer it in evidence, your Honor, please, as Government's Exhibit 342.

Mr. Sullivan: Make the same objection, if your Honor please, with respect to this exhibit as we did with respect to Exhibit 337, and ask the Court's permission that we may do so in that form without reiterating all the grounds.

The Court: You may do so, and the objection will be overruled. It will be received in evidence.

The Clerk: Government's Exhibit 342 in evidence.

(Thereupon calculation referred to was received in evidence and marked U. S. Exhibit No. 342.)

Mr. Fleming: I have similar photostatic copies of this for the use of the Court and jury (handing documents to Court and jury).

Q. (By Mr. Fleming): Now, will you tell me with respect to this document if you went through



(Testimony of Augustus V. Brady.)

the same process which [1994] you have described for the years 1942 to 1944, inclusive, that is, calculation of taxable income on the net worth basis?

A. Yes, sir; I did.

Q. What are the two starting figures which you use?

A. Net worth as of December 31, 1944; net worth as of December 31st, 1945.

Q. And will you give us those figures again, please?

A. December 31, 1944, \$886,473.37.

Q. And the figure for the end of 1945?

A. \$1,115,155.04.

Q. And did you then find an increase or decrease in net worth during the year 1945?

A. Increase.

Q. How much?           A. \$228,681.67.

Q. Now, will you give us the next item you have put down on the chart?

A. Plus non-deductible expenses. Federal income taxes paid in 1945 by Chin Lim Mow per Exhibit 31, \$20,275.19; Chin Wong Shee, Exhibit 32, \$20,275.19; making a total of \$40,550.38.

Q. Does that represent moneys spent during the year 1945 by Chin Lim Mow and Chin Wong Shee?

A. Yes. [1995]

Q. And did you, accordingly, add or subtract that?           A. I added it.

Q. What is the next item?

A. Fines and forfeitures, \$13,301.75.

(Testimony of Augustus V. Brady.)

Q. I will show you Exhibit 341, for identification, and ask you if that is a separate schedule you prepared of fines and forfeitures during the year 1945, referring to Chin Lim Mow? A. Yes.

Mr. Fleming: Offer it in evidence, if the Court please, as Government's Exhibit 341.

Mr. Sullivan: Same objection, if your Honor please, as we made to Exhibit 337, we make to this exhibit, and ask leave of the Court to submit it in that form without reiterating the grounds.

The Court: Very well. Objection will be overruled and it will be received in evidence.

The Clerk: Government's Exhibit 341 received in evidence.

(Thereupon schedule referred to was received in evidence and marked U. S. Exhibit No. 341.)

Q. (By Mr. Fleming): Now, will you give me the breakdown of the items you have included in fines and forfeitures paid, 1945?

A. Yes. Details of fines and forfeitures. Marion Overstreet, [1996] page 88, dated 2/14/45, in the amount of \$2,300.

Sheriff Long, a forfeiture, page 96, dated August 28, 1945, \$6,251.75.

Mrs. Lou Zellers, Contra Costa County, page 109, dated 9/12/45, \$2,750.

Mr. George Gibbons, on page 122 of the transcript, mentions in 1945 he took some money to bail some people out, \$2,000.

That makes a total of \$13,301.75.

(Testimony of Augustus V. Brady.)

Q. I notice after "George Gibbons," you have "\$2,000" and the figure "plus." A. Yes.

Q. Will you identify that reference, please?

A. He said it was about \$2,000, my recollection, could have been more, so you instructed me to put \$2,000 down.

Q. Now, these fines and forfeitures, do they represent money paid out, moneys spent by the defendant during the year 1945? A. Yes.

Q. Did you then add or subtract this amount of \$13,301.75?

A. I added it to the increase in net worth.

Q. How about the next item?

A. Life insurance premiums paid, \$4,930.60.

Q. Does that represent moneys spent by the defendant? A. Yes, sir. [1997]

Q. And the next item?

A. Personal living expenses.

Q. What sum have you put down on that item?

A. We put nothing down.

Q. Well, on the net worth basis if you were able to identify personal living expenses, would that be added to the total income?

A. It would be added to the increase in net worth, yes.

Q. Now, what is the total which you arrived at?

A. \$287,464.40.

Q. And have you taken some subtractions?

A. Yes, sir.

Q. Will you give us those, please?

(Testimony of Augustus V. Brady.)

A. Non-taxable income was a refund of Federal F.I.C. taxes per Exhibit 41, \$10,500.45. Increase in cash surrender value of life insurance, \$4,892.39. Non-taxable portion of capital gains per Exhibit 1, the return, \$1,157.17. Making a total reduction of \$16,550.01.

Q. And have you then made those additions and subtractions and arrived at the figure of taxable net income on the net worth basis for the year 1945?

A. Yes, sir; I have.

Q. And will you give me that figure, please?

A. \$270,914.39.

Q. Now then, 1945, you have given us a net income figure [1998] of how much?

A. \$270,914.39.

Q. Did you examine the defendant's tax returns in the name Chin Lim Mow and Chin Wong Shee for the year 1945 to determine how much was reported on the tax return of the defendant and his wife for that year?      A. Yes.

Q. And how much did you find was reported?

A. Reported by both husband and wife was \$54,341.66. [1999]

Q. Did you then make a calculation of unreported income for the year 1945?

A. Yes, I did.

Q. And what is the total?      A. \$216,572.73.

Q. In connection with this calculation I will show you Government's Exhibit 286 for identification and ask you if this is a calculation you made, headed "Detail of sales of capital assets"?

(Testimony of Augustus V. Brady.)

A. Yes.

Mr. Fleming: Offered in evidence, if the Court please, as Government's Exhibit 286.

Mr. Sullivan: We make the same objection, if your Honor please, we made heretofore with respect to the other exhibits, particularly 337, and ask leave of Court to state it in that way without reiterating the grounds.

The Court: Very well, the record will show that, and the objection will be overruled.

The Clerk: 286 in evidence.

(Thereupon the document identified above was received in evidence and marked U. S. Exhibit No. 286.)

Q. (By Mr. Fleming): Now, I will show you Government's Exhibit 343 for identification and ask you if you can identify that document, please?

A. It is a schedule of Federal income taxes reported on the [2000] returns of Chin Lim Mow's family for the year 1945.

Q. Did you secure those figures from the exhibits mentioned?      A. Yes, sir.

Mr. Fleming: Offered in evidence, if the Court please, as Government's Exhibit—

The Court: Be received.

Mr. Fleming: —343.

The Clerk: Government's Exhibit 343 in evidence.

(Testimony of Augustus V. Brady.)

(Thereupon the document identified above was received in evidence and marked U. S. Exhibit No. 343.)

Mr. Fleming: I will ask that this document be marked Government's exhibit next in order, a document headed Chin Lim Mow taxes paid 1945 by other members of the family.

The Clerk: Government's Exhibit 346 for identification.

Q. (By Mr. Fleming): I will show you Exhibit 346 for identification and ask if you identify this as a tabulation of the taxes paid in 1945 by other members of the Chin family per Exhibits 33 to 40, inclusive? A. Yes, sir.

Mr. Fleming: Offered in evidence as Government's Exhibit 346.

The Court: Let it be received.

The Clerk: Government's 346 in evidence.

(Thereupon the document identified above was received in evidence and marked U. S. Exhibit No. 346.) [2001]

Q. (By Mr. Fleming): Now, I will show you Exhibit 344 and ask if you have made a calculation of tax of Chin Lim Mow and spouse Chin Wong Shee for the taxable year ending December 31, 1945? A. Yes, sir; I have.

Q. And is that the calculation?

A. Yes, it is.



(Testimony of Augustus V. Brady.)

Mr. Fleming: Offer in evidence, if the Court please, as Government's Exhibit 344.

Mr. Sullivan: Objected to, if your Honor please, upon the same grounds we have heretofore stated with respect to 337. I ask leave of the Court to state the objection in that way.

The Court: You may do so. The objection will be overruled, received in evidence.

The Clerk: Government's Exhibit 344 in evidence.

(Thereupon the document identified above was received in evidence and marked U. S. Exhibit No. 344.)

Q. (By Mr. Fleming): Now, so far you have given us calculations of income, have you not?

A. That's correct.

Q. And when you gave us this figure, these figures of \$270,914.39, that is the figure of taxable income, is it not?      A. That's correct.

Q. And when you gave the figure for the year 1942, 1943, and 1944 of \$751,910.02, that, too, is a figure of income? [2002]      A. That's correct.

Q. Is it not?      A. That's correct.

Q. Now, with respect to tax for the year 1945 I will ask you what is the starting figure you used in this calculation?

A. For the taxable year ending December 31, 1945, income per Exhibit 342 shows \$270,914.39.

Q. And to that figure have you made the addition indicated on the chart?      A. Yes.

(Testimony of Augustus V. Brady.)

Q. And how much is that addition?

A. I added \$27,239.09.

Q. And is that the figure indicated in Exhibit 346, Chin Lim Mow Federal income taxes paid in 1945 by certificates 33 to 40, inclusive?

A. Yes, sir.

Q. And what figure then did you reach as the total? A. \$298,153.48.

Q. Now, on that figure of \$298,000 and some odd dollars did you make a computation of tax?

A. Yes, sir.

Q. And did you make that computation for husband and wife, Chin Lim Mow and Chin Wong Shee? A. Yes, sir.

Q. And what was the total tax which you calculated? [2003]

A. The total tax for husband and wife was \$228,645.18.

Q. And did you examine Exhibits 1 and 2 to see the taxes reported by Chin Lim Mow and Chin Wong Shee? A. Yes.

Q. And did you put down those figures?

A. Yes.

Q. And what was the total? Do you have them listed separately on this particular exhibit?

A. Yes, I do.

Q. Will you give us the addition?

A. Tax reported on Exhibit 1, Chin Lim Mow, \$11,646.03. Tax reported on Exhibit 2, Chin Wong Shee, \$11,646.03.

(Testimony of Augustus V. Brady.)

Q. Did you also put down the taxes reported on the returns of Chin Lim Mow's family for the year 1945 as set forth in Exhibit 343, being the tax reported in the name of Bertha Chan, Alvin Chan, Norma Wong Chan, Janet Chan Lee, May Chan, Wu Taam, Hom Yuk Lim and Norman Chan?

A. Yes, I did.

Q. What is the total of all those taxes reported on those returns for the year 1945?

A. \$23,583.77.

Q. Did you then add up the total tax reported, Chin Lim Mow, Chin Wong Shee and the Chin family on that schedule? A. Yes, sir.

Q. And what was the total? [2004]

A. \$46,875.83.

Q. And did you calculate the difference between the tax as you have computed it and the tax reported which you have just identified?

A. Yes, sir.

Q. And what is that figure?

A. \$181,769.35.

Q. Can you identify those same figures as having been set forth in the graphic chart which I will ask at this time be marked as Government's exhibit next in order?

The Clerk: Government's Exhibit 347, for identification.

Q. (By Mr. Fleming): I will show you the chart as soon as counsel has examined it and I have had it marked.

(Testimony of Augustus V. Brady.)

Can you identify those as being the figures set forth in this chart?

A. \$228,645.18, \$23,583.77, and \$23,299.06; yes.

Mr. Fleming: Offer the chart in evidence, if the Court please, as Government's Exhibit 347.

Mr. Sullivan: Same objection, if your Honor please, that we made with regard to Exhibit 337, ask leave of Court to state it in that way without reiterating our grounds.

The Court: Same ruling. Objection will be overruled, received in evidence.

The Clerk: Government's Exhibit 347 in evidence.

(Thereupon the chart identified above was received in [2005] evidence and marked U. S. Exhibit No. 347.)

Q. (By Mr. Fleming): You see a scale of this chart indicated on the back? A. Yes.

Q. And give us the scale, please.

A. Three-fourths of an inch equals \$5,000.

Q. Now, help me pin this chart up.

Now, I will direct your attention to the first black box and ask you to identify that. What is the figure \$23,299.06 that represents the tax reported by Chin and his wife during the year 1945?

A. On the 1945 return.

Q. Now, the next black box, \$23,583.77; what is that?

A. That is the tax reported on the 1945 returns of the Chin family.

(Testimony of Augustus V. Brady.)

Q. Now, what is this column, \$228,645.19?

A. That is the tax liability on \$298,153.48.

Q. Now, that column is partly in black down at the bottom. Can you identify the figure of \$46,-875.83?

A. That is the tax reported by Chin Lim Mow and his family on the 1945 return.

Mr. Fleming: No further questions.

The Court: You prefer, Mr. Sullivan, to wait?

Mr. Sullivan: We are so short of time, I can go right ahead now, unless your Honor would [2006] prefer.

The Court: I was merely making the suggestion to you; you might want to organize your thoughts, perhaps.

Mr. Sullivan: Well, I thought I might be able to get some of this out of the way.

### Cross-Examination

By Mr. Sullivan:

Q. Now, Mr. Brady, yesterday Mr. Fleming talked to you about the surtax brackets which were obtaining in 1945 in respect to the net income of individual taxpayers. A. Yes.

Q. You recall that you had before you at that time Exhibit 65, which I have handed you there?

A. That's right.

Q. I believe you told us that according to that exhibit and according to the rates of taxes appli-

(Testimony of Augustus V. Brady.)

cable to income for individuals in 1945 the rates were on a graduate basis; is that correct?

A. That is right.

Q. So that the higher the income the higher the rate, generally speaking? A. That's correct.

Q. Now, for example——

A. You want to use the exhibit?

Q. You have one of yours? A. Yes.

Q. I am sorry. For example, I will direct your attention [2007] to the surtax table, and just taking at random the figure of \$16,000, do you find there what the surtax would be on \$16,000?

A. Yes.

Q. And what is it, please?

A. It is \$5,200.

Q. Well, technically, that is really for over \$16,000, isn't it? A. No.

Q. I see, that is the calculation made——

A. And the excess would be fifty per cent in excess of \$16,000.

Q. So the \$16,000 we have a surtax again of what? A. \$5,200.

Q. Now, if I, as an individual, have a net income in the year 1945 of \$16,000, leaving out all other factors in the calculation, my surtax would be \$5,200; isn't that correct?

A. You mean if your income was subject to surtax after exemptions?

Q. That's all. A. Yes.

Q. Now, do you find indicated on this chart



(Testimony of Augustus V. Brady.)

which you are reading here a percentage figure after the figure of \$5,200?      A. Yes.

Q. And what is that, what percentage is [2008] that?

A. Plus 50 per cent of the excess over \$16,000.

Q. All right. Now, in plain language all that means is for every additional dollar I might have over the \$16,000 the tax would be 50 per cent of it so far as the surtax here?      A. That's right.

Q. It does not mean that the \$16,000 was taxed at a fifty per cent rate, does it?

A. That's correct.

Q. And it doesn't mean that between the first dollar that I earned in 1945 and the 16,000th dollar that I earned there was a rate of 50 per cent applicable to any one of those dollars, does it?

A. No, being a graduate rate.

Q. Being a graduate rate going up?

A. Correct.

Q. Now, if in addition to the \$16,000 which I earned I had an income for my wife of \$16,000 and added them together and reached \$32,000, what would the surtax be on the \$32,000?

A. Filing one return, Mr. Sullivan?

Q. Filing one return.

A. Surtax on \$32,000 would be \$14,460.

The Court: You might clarify that, counsel. You said filing one return. By that do you mean filing a joint return of husband and wife, do you not, Mr. Sullivan?

(Testimony of Augustus V. Brady.)

Mr. Sullivan: Yes, your Honor, although I took Mr. Brady's [2009] question on it.

Q. What amount for the purpose of calculation that the income of the husband and wife would be included in a single return, without giving the benefit of a separate reporting on a community basis? Do you understand?

A. I understood you wanted to know the surtax on the whole \$32,000?

Q. On the whole \$32,000. What would be that again? A. It would be \$14,460.

Q. Now, for the first dollar that was added to the \$32,000 total tax, at what rate would that be taxed according to your schedule in 1945?

A. Sixty-five per cent of the excess over \$32,000.

Q. And that would mean, generally speaking, that for each additional dollar that my wife and I put on a single return, instead of paying only fifty cents of it to the Government we would pay sixty-five cents of it to the Government; isn't that correct? A. That is correct.

Q. Now, Mr. Brady, suppose that by way of further illustration of this subject that you talked to Mr. Fleming about, the first four people in the jury box here and I were partners in a business, and the business had a net income of \$50,000 in 1945, and instead of calculating all of the tax by distributing ten thousand to each of us, instead of doing that to include [2010] all of the income and put in on my shoulders, will you tell us how much the tax, surtax would be on the \$50,000 in 1945?

(Testimony of Augustus V. Brady.)

A. Surtax on \$50,000 is \$26,820.

Q. \$26,820. And if I had an additional dollar to put on top of the \$50,000, tell me how much of the additional dollar I would then have to give the Government?

A. Seventy-five per cent of the excess over fifty thousand.

Q. All right.

Now, in the first example, I am taking as an illustration, an incident where you say, Sullivan, you have got all the \$50,000, and I am going to calculate your tax bill. But now I am going to ask you to take an illustration where the first four people in the jury box and I go to a tax consultant and he files a partnership return and he says, Mr. Sullivan, I will distribute to you as your distributable share, \$10,000, you being a one-fifth partner, and ten thousand also equally to each of your other four partners who have at one time sat in that jury box, and I say to him, now, tell me how much surtax I have to pay in 1945 on my share, because there was another instance where somebody tried to give me the whole fifty thousand.

Now, if that occurred, tell me the surtax?

A. Surtax on \$10,000?

Q. Please. A. Be \$2,640.

Q. And if I had an additional dollar of income that I put in [2011] that 1945 return that the tax consultant prepared for me, how much of the additional dollar in the second example would I have to pay to the United States Government?

(Testimony of Augustus V. Brady.)

A. Thirty-eight per cent of the amount in excess of \$10,000.

Q. So it follows, does it not, Mr. Brady, by way of carrying out your illustration, that wherever you take income of several people and allocate it all to one person that naturally the tax is going to be higher, isn't it?

A. I wouldn't say that, Mr. Sullivan.

Q. If—— A. Because——

Q. Pardon me, I didn't mean to interrupt you.

A. Well, if you are just going to make a certain computation and arrive at a larger amount, you are going to have a higher surtax, but the allocation that would be—because of whether it would be factual or proper to do that.

Q. Of course, in this case you are not passing upon the facts? A. No.

Q. Are you?

A. No, but you are saying that assuming this.

Q. I am asking you to take my assumptions.

A. Yes.

Q. So will you kindly take my assumptions just as you took Mr. Fleming's assumptions? [2012]

A. Yes, surely. On your assumptions if there is a higher income subject to surtax it would be a higher rate.

Q. And if for example I took any one of the gentlemen in the jury box and I had an income of \$30,000 and the gentleman's income was \$20,000, and this was either calculated on a computed basis or it was reconstructed on a net worth basis, if

(Testimony of Augustus V. Brady.)

somebody says, Sullivan, this is all yours, and I am going to calculate it, I will have to pay more tax on the \$50,000, naturally, than I would on the \$30,000, wouldn't I?      A. That's right.

Q. And in addition to that I would also have to pay a greater percentage of each additional dollar over \$50,000 to the United States Government than I would if I only had a surtax bracket of \$30,000?

A. That's correct.

Q. Now, as a matter of fact, if somebody in calculating my income of \$30,000 had considered that I owned, or I had in their rents, dividends—Mr. Bailiff, I am out of chalk again.

I will name the rest. Rents, dividends, income from partnership, interest from my bank account—thank you. In the ordinary calculation you cannot say that the rents which are included in the \$30,000 are taxed at a certain bracket, can you?

A. No, sir.

Q. And you can't say that the dividends are taxed at a certain bracket? [2013]      A. No.

Q. They are all thrown into the same pot, aren't they?      A. That's right.

Q. So that once I put all my income into the same figure and I arrive, for example, to take my first figure, at a net income for me alone of \$50,000, then I pay a tax bill of \$26,820, as far as the surtax goes; isn't that correct?      A. That's right.

Q. And it cannot be said that if there are \$20,000 worth of partnership income in here that it is taxed at the—what is the bracket on \$50,000?



(Testimony of Augustus V. Brady.)

A. Seventy-five per cent.

Q. All right. And what is the next bracket below it? A. Seventy-two per cent.

Q. All right. For example, it cannot be said, can it, that the partnership income came in last and so that is taxed as the next highest bracket, the 72 per cent bracket, can it? A. No.

Q. As a matter of fact, from the standpoint of the Bureau of Internal Revenue it cannot be said in any way as to what the ingredients of the income are themselves if separately taxed, can it?

A. Well, there is an exception with capital gains.

Q. Aside from that, talking about income and not capital? A. Yes. [2014]

Mr. Sullivan: This might be a convenient time, if it meets with your Honor's approval.

The Court: Very well. We will take an adjournment, ladies and gentlemen, until 2 o'clock this afternoon.

Mr. Sullivan: Your Honor mentioned something yesterday about a night session tonight, and my only concern I have is with the witnesses, your Honor, which is a little bit of a problem. I have had them contacting me all day yesterday——

The Court: Well, I am going to defer decision on that until this afternoon.

Mr. Sullivan: Keep them waiting, your Honor?

The Court: Yes.

(Thereupon a recess was taken until 2 o'clock p.m. this date.) [2015]



Thursday, October 9, 1952, at 2:00 P.M.

AUGUSTUS V. BRADY

resumed the stand; previously sworn.

Cross-Examination

(Continued)

By Mr. Sullivan:

Q. Mr. Brady, I wonder if you would be good enough to look at the counterpart that you have there of the income tax rates, which is United States 65? A. Yes.

Q. Will you kindly assume that in the year 1945 we have an ordinary net income of \$16,000 for a single man? Would you give me the amount of surtax that is carried on that printed form for that?

A. You want me to make a computation of the standard deduction, and so forth?

Q. No, let's take the computation——

A. (Interposing): Surtax on \$16,000?

Q. Yes. A. \$5,200, Mr. Sullivan.

Q. Now, let us assume, if you will, that instead of being single in 1945 I was married and my wife and I had the same income of \$16,000, and we reported it \$8,000 each on separate returns, as they did in those days. Would you kindly give me the surtax on \$8,000? A. \$1,960. [2016]

Q. And I assume my wife would pay \$1,960, too; is that correct? A. That is correct.

Q. Then we would both pay the United States Government \$3,920; is that correct?

(Testimony of Augustus V. Brady.)

A. That is right.

Q. So that instead of paying \$5,200 in my report as a single man, if I were single, my wife and I now pay \$3,920, which is a saving of \$1,280; is that correct?

A. That is correct, by dividing the income and reporting in two returns.

Q. Yes. In other words, by virtue of splitting of that income, on those assumed facts, the United States Government has received \$1,280 less money than it would in the first assumed instance?

A. Yes, it would be less tax on separate returns.

Q. Yes. Now, let's say that I am in a business and the total net income of that business is \$50,000; and let's say that all that net income is charged to me rather than charged to myself and the four partners who also happen to be in the partnership which conducted the business. Can you give me under the first assumed instance how much I would pay if the \$50,000 were charged to me alone?

A. You mean you want the surtax on \$50,000?

Q. That is right. [2017]

A. It would be \$26,820.

Q. Instead of charging the \$50,000 to one of the partners as in my first assumed instance, will you kindly assume that each of the partners reported an equal one-fifth, or \$10,000? Will you give me what the surtax would be on the divisible portion of the \$10,000?

A. The surtax on \$10,000 would be \$2,640.

(Testimony of Augustus V. Brady.)

Q. And if five of us paid \$2,640, we would have \$13,200 as the total amount of money paid to the United States Government on the second assumed instance; is that correct? A. That is correct.

Q. So that in the instance that I ask you to assume where we have the partnership, the United States Government receives \$13,620 less money than it would in the assumed instance where all the money was charged to one partner?

A. I don't quite follow you on that, Mr. Sullivan.

Q. I just ask you to assume, first, that all of the income is charged to one partner, \$50,000, and you told me if that were so the surtax on that would be \$26,820.

A. I think I answered that the surtax on \$50,000 would be \$26,820.

Q. I am only asking you for the surtax from your table on these amounts.

A. That is right.

Q. Without considering any other facts, for the sake of [2018] convenience. A. Yes.

Q. Upon the same assumption of facts with regard to the absence of other factors, I am asking you to, however, assume the \$50,000 was reported or was distributed \$10,000 to each of five partners.

A. Yes.

Q. And I asked you if that were done, if you would calculate for me from the table what would be the surtax on each of the \$10,000 distributive share, and you told me it would be \$2,640.

(Testimony of Augustus V. Brady.)

A. That is right.

Q. If each of the five partners then paid the same amount of \$2,640, they would pay a total to the United States Government so far as surtax is concerned of \$13,200?      A. That is correct.

Q. So that under the second assumed set of facts the United States Government would receive \$13,620 less money than it would if we assumed a situation where the entire \$50,000 was chargeable to me?

A. That's right.

Q. All right. Now, generally speaking, Mr. Brady, if we assume that there is a marriage and the income is split, you are going to have less tax going to the government than if you did not have a marriage; isn't that correct? [2019]

A. Yes, by filing separate returns; yes, sir.

Q. Yes.      A. Yes, of course.

Q. If you assume there is a partnership and the amounts of net income reported by the partnership on information returns are reported by the individual partners—if we assume that, we are going to have less tax paid the United States Government than if we assume there isn't a partnership; isn't that right?      A. Yes.

Q. So that in any instance where the income is divided upon facts similar to the facts I have asked you to assume, it must follow from the schedule that less money will go to the United States Government; isn't that true?      A. That is correct.

Q. Now, you told Mr. Fleming that you had pre-

(Testimony of Augustus V. Brady.)

pared some schedules and that the purpose of the schedule, generally speaking, was to indicate certain calculations that you have made or did make with respect to net income involved in this case upon a net worth basis?      A. That's right.

Q. And Mr. Fleming asked you some questions for the purpose of illustration about the net worth method; do you recall that?      A. Yes.

Q. I wonder if you would be good enough to go over with me some illustrations that I might have? Let's assume that at [2020] the beginning of the year 1944 I had assets consisting of, say, \$2,000 and liabilities consisting of \$1,000, then my net worth would be \$1,000, would it not?

A. That is correct.

Q. And for purposes of convenience we will take the last day of the year; isn't that correct?

A. Usually it is.

Q. Usually it is. All right. Let's assume, further, that on the last day of 1945 my net worth was \$10,000. If I subtract the \$1,000 from the \$10,000, I have what is known as an increase in net worth, do I not?      A. That is right.

Q. And that would be——      A. \$9,000.

Q. \$9,000. And assume for the purposes of this illustration, if you will, Mr. Brady, that we are talking about me and I have given you an assumed state of facts where I am worth \$1,000 at the beginning of 1945 and \$10,000 at the end of 1945. We have calculated, then, I have an increase in my net



(Testimony of Augustus V. Brady.)

worth during the year 1945 of \$9,000; is that correct?      A. Yes.

Q. Now, you have told us that where there are any non-deductible expenditures made during the year, it is part of the net worth method of calculation to add that to the increase?

A. That is right. [2021]

Q. And that is done on this basis, is it not, that if I spent, for example, \$5,000 on a trip to Honolulu, I am not entitled to deduct that, am I, from my income purposes?      A. Well—

Q. Say it is a pleasure trip.

A. Pleasure trip.

Q. And if that is so, the money had to come from money inside the year 1945?

A. That is correct.

Q. And since it came out of that year 1945, you have to put it back in the year 1945?

A. Correct.

Q. So let's assume that I did go to Hawaii, and that money was expended, and that is for pleasure, and it costs \$5,000, then your examination of my income tax liability so far as amounts to this year that you have found that I have a net worth increase as adjusted by non-deductible expenditures for the year 1945 of \$14,000.

A. Assuming the facts you have told me, yes.

Q. Well, I am only giving you a hypothetical case.      A. Yes.

Q. Based on the assumption I gave you. You understand that?      A. Yes.



(Testimony of Augustus V. Brady.)

Q. That is similar to Mr. Fleming's treatment of you, wasn't it? He gave you hypothetical cases, did he not? [2022]           A. Yes.

Q. All right. Now, you are interested in whether or not I have a liability to the United States Government, so as an examining agent you pick up my return and you find—strike that last part. What do you look for on my return as the last item which you put into your calculations?

A. Net income reported.

Q. All right. And let us assume that you find on my return that I have reported \$14,000, then have you not done what you accountants and revenue agents call—have you not done a reconciliation of my increase in assets against my reported income?           A. Yes.

Q. This is what is known as a reconciliation, is it not?

A. Could be called that, yes, Mr. Sullivan.

Q. Don't you accountants call it that quite frequently?

A. Well, we call it a computation, and of course if it comes with—we would show them that there would be no understatement.

Q. All right. Now then, on the basis of this method—withdraw that. Incidentally, this is an accountant's method, is it not?           A. Yes.

Q. And you have to observe certain principles of accountancy, don't you? [2023]           A. Yes.

Q. You naturally, being an accountant—accountancy is a profession, is it not?           A. Yes.

(Testimony of Augustus V. Brady.)

Q. And you have to follow certain applicable principles of your profession as his Honor and I do in ours; is that not correct? A. Yes.

Q. Now, it is also a tax practice, isn't it?

A. What is a tax practice?

Q. The application of the net worth method to the computation of income. A. Yes.

Q. It is practiced by revenue agents?

A. Sure.

Q. So it becomes a tax practice? A. Yes.

Q. Now, the first important thing, then, in my illustration that I gave you is that which I will mark "A," the \$1,000, is it not?

A. That is right.

Q. And what do you call that, tell the ladies and gentlemen of the jury.

A. Net worth at the beginning of the period.

Q. Isn't that frequently called the starting point? [2024] A. Yes.

Q. Have you as the technical advisor to the Penal Division of the general accounting office read any literature where you have heard that referred to as the starting point? A. Yes.

Q. Now, under my set of facts that I gave you in this illustration, I have given you an absolutely complete and accurate starting point, haven't I?

A. Yes.

Q. I have told you I don't own a thing in the world other than, nor have I any other liabilities than what I have stated, and my net worth is

(Testimony of Augustus V. Brady.)

\$1,000; isn't that correct?      A. That is correct.

Q. The next important factor in this formula is the figure of adjusted net worth that you come down to before you make your reconciliation, is it not?

A. Well, I think you want to get the starting and the ending, Mr. Sullivan.

Q. All right.      A. \$10,000.

Q. We will take the ending.      A. Yes.

Q. That is step 2, the ending?      A. Yes.

Q. I wanted to do it more briefly, but we will do it your way. [2025] And having established the ending, then the third point would be the increase?

A. That's right.

Q. And the fourth point would then be the increase as you would adjust it by any adjustments, plus or minus, as you told Mr. Fleming?

A. That is correct.

Q. Now, this figure which you end up with, and which is \$14,000 in my illustration, is it an income figure or is it a tax figure?

A. I would say that would be a tax figure.

Q. The \$14,000, Mr. Brady?

A. Net taxable income, yes.

Q. Then it is an income figure?      A. Yes.

Q. It isn't taxes paid?      A. No. No.

Q. It is, then, an income figure?

A. Net taxable income.

Q. All right. When I said, "Is it an income figure?" I meant is it an income figure as distinguished from a figure of tax paid on income. That is what I meant. Do you understand?

(Testimony of Augustus V. Brady.)

A. One you pay tax on.

Q. Yes, pay tax on?      A. Yes. [2026]

Q. So that on that basis it isn't a tax figure, but it is an income figure?      A. That is correct.

Q. Now, under the accepted accountant's formulas of net worth method, you must compare, match or reconcile this figure with an income figure?

A. Yes.

Q. And that income figure is the reported income on the return?      A. That is right.

Q. So that the important step here, then, the first step, is the assurance that you have an accurate and complete starting point; is that right?

A. Well, we try to get the net income, the starting point, as accurate as we possibly can.

Q. I am not talking about what you try to do; I am talking about your formula for that.

A. Yes.

Q. As an accountant's formula.      A. Yes.

Q. All right. If in any of those net worth figures that you have there in my illustration you subsequently found that assets were omitted or liabilities were omitted, then the net worth figure would be erroneous, wouldn't it?

A. Well, it would be changed, yes.

Q. Well, in its present form it would be [2027] erroneous?      A. Yes.

Q. And if this figure were erroneous, all of the calculations down, up to the point of reconciliation, would likewise have to be adjusted, wouldn't they?

A. Correct.

(Testimony of Augustus V. Brady.)

Q. And similarly, if you found that there had been included which should not have been included at 12/31/45, or assets omitted which should have been included, that figure then would be erroneous, wouldn't it?      A. That is correct.

Q. And that affects the entire calculation down to the point where you were going to make your reconciliation with reported income?

A. That is correct.

Q. Now, let's take a situation, Mr. Brady—oh, strike that and let me ask you this question: I am sure the figures are fresh in your mind. In the assumption I gave you, you compared the \$14,000 figure which was used as an illustration as my net worth increase, or net income—net taxable income as adjusted on a net worth basis, you compared that figure with an income figure on whose tax return?

A. On your tax return.

Q. And nobody else's; isn't that right?

A. That is right, unless you had somebody else reporting income for you that belonged to [2028] you.

Q. I didn't give you that yet.      A. No.

Q. Let's take this situation now: Supposing we had an ABC partnership, and assume a state of facts wherein at 12/31/44 the net worth of that partnership was \$5,000, and at 12/31/45 the net worth of the partnership is \$10,000; and assume, further, that there had been no drawings from the partnership during the year. Have you those assumed state of facts in mind, Mr. Brady?



(Testimony of Augustus V. Brady.)

A. Yes.

Q. Now, let's say, assume further that there were five partners in the partnership. Taking the first part of the illustration, can you tell me, based upon that assumed state of facts, whether there had been a net worth increase in the partnership investment, first?      A. Yes.

Q. And how much is that?      A. \$5,000.

Q. And you get that by subtracting the 12/31/44 from the 12/31/45; is that correct?

A. That is right.

Q. Now, let's assume that each of these partners reported on their income tax return \$1,000 as their share, distributive share of the ABC partnership. Have you that assumption in mind? [2029]

A. Yes.

Q. Now, let's assume that you are investigating partner "A," and in making this calculation of net worth you have charged partner "A" with all of the assets of the partnership and all of the increase. Have you that assumption in mind?

A. If I were making the examination, Mr. Sullivan, you say?

Q. I am just assuming that.

A. If I were making it—

Q. I am not asking what you would do.

A. I thought you said—

Q. No, I am asking you to assume. We will start all over again.      A. All right.

Q. Assume that upon your calculation of the net

(Testimony of Augustus V. Brady.)

worth the entire investment in the partnership is charged to one of the partners, partner "A"; is that correct? Can you bear in mind that assumption?

A. Well, if it is a legitimate partnership I cannot see why it should all be charged to one partner.

Q. Mr. Brady, I am just asking you to take an assumed state of facts. Will you assume that one of the partners in the partnership, please, is charged in a net worth statement with the entire investment and increase of the partnership equity? Will you assume that, please? A. Yes. [2030]

Q. All right. Let's assume further that there were no adjustments to the net worth increase of \$5,000. A. Yes.

Q. So, so far as this analysis goes, the net taxable income to be reconciled is the reported income of \$5,000; isn't that correct?

A. According to your theory, yes.

Q. All right. Now, if you reconciled the \$5,000 against the tax return of partner "A" only, it wouldn't reconcile, would it?

A. That is right.

Q. In order to reconcile this investment in this partnership upon my assumed state of facts, the increase in this net worth, you would have to reconcile it with all of the returns and all of the reported incomes of the five partners, wouldn't you?

A. Well, you would have the difference of \$4,000 that hadn't been reported by partner "A."

(Testimony of Augustus V. Brady.)

Q. Exactly. If you reconciled the \$5,000 with the return of partner "A" alone, it would show \$4,000 unreported income, wouldn't it?

A. That is right.

Q. So that to reconcile it properly, so long as you are charging all the income to "A" under my assumed state of facts, you would have to reconcile the \$5,000 with the reported income of all the partners, wouldn't you?

A. To account for the \$5,000. [2031]

Q. Yes.

A. If you wanted to see how it was divided, yes.

Q. If you did that, you would in this example, then, find that the \$5,000 increase in net worth had reconciled with the reported income from the co-partnership as reported by the five partners, wouldn't you?

A. Well, you would find whether it was distributed by looking at the other partnerships, yes.

Q. Now, in applying the net worth formula, then, Mr. Brady, it is essential from an accountant's point of view, is it not, that there be a clear and accurate starting point?

A. From an accountant's point of view you do—you get the starting point as clear and as accurate as is possible to determine.

Q. Aside from what might be the——

A. (Interposing): Accepted theory?

Q. I will withdraw that. You, as a professional accountant, would not approve of a starting point

(Testimony of Augustus V. Brady.)

for a net worth formula that was not clear or accurate, would you?

A. If I was certain that it wasn't clear, I would suggest it be as clear as possible, yes.

Q. Then if you found it was neither clear nor accurate, you would not adopt it as a starting point of a net worth formula in accordance with accepted principles of accountancy, would you?

A. No. [2032]

Q. And then the next big step in the net worth method is the final figure for taxable income on the net worth basis, is it not, disregarding those minor steps that we talked about? A. Yes.

Q. Now, incidentally, you have used net worth basis, I have used net worth basis, your charts have net worth basis, Mr. Fleming uses net worth basis; when we use that as accountants, or you use that, you're referring to a basis which is a reconstructed basis, isn't it? A. Yes.

Q. In other words, if you as a revenue agent walked into my office and found that I had an entry for \$5,000 for services in my books and you picked up my tax return and you found that it wasn't on my tax return, that would be a direct basis for asserting it a deficiency, wouldn't it?

A. That being the only item.

Q. That being the only item?

A. Being the specific item, yes.

Q. Of course, as a revenue agent, if you walked in and you also found in my books a number of

(Testimony of Augustus V. Brady.)

deductions, you would probably allow me for the deductions, too, wouldn't you, against the \$5,000?

A. If we were computing the deficiency on the basis of specific items, yes. [2033]

Q. Yes. So that generally speaking the Revenue Service uses two methods of computing deficiencies, do they not? They use what is called a computed method and use what is known as a reconstructed or secondary method; is that right?

A. Well, we refer, probably, to it as specific item.

Q. A specific item method? A. Yes.

Q. Now, that is a primary method, isn't it?

A. Yes.

Q. And the net worth method is a secondary method?

A. Well, we might use the net worth to substantiate—

Q. Might use both of them? A. Yes.

Q. Yes, you might use both of them?

A. That's right.

Q. Then the third step, to come back to these three steps, would be the reported income in the example I have given on my return; isn't that correct? A. That's correct.

Q. Now, you would then, in following this method, have to preserve a consistency, would you not, to see that up here where you figure out the net worth you're talking only about my assets and liabilities; isn't that correct?

A. That is correct.



(Testimony of Augustus V. Brady.)

Q. And where you are talking down here about the reported [2034] income you're only talking about my reported income? A. Correct.

Q. So that there must be a consistency, must there not, between the accountancy and the tax practice? A. Yes.

Q. Now, you have prepared a number of schedules here, Mr. Brady, which you have discussed with Mr. Fleming, and I am referring now to Exhibits 337 through 344 and all the supporting exhibits which were mentioned in the record during the examination of you by Mr. Fleming. You, of course, have all those in mind? A. Yes.

Q. Let me ask you, do you have some facsimile of them there?

A. I believe I do. If you call them out I can see if I have a copy of it.

Q. Now, Mr. Brady, as I understand it, you prepared yourself all of these that I have mentioned, and of course I don't mean that you typed them out—prepared them in the sense of preparing the material for them?

A. Yes, I prepared them under the directions of Mr. Fleming.

Q. Now, to refer you, for example, to Exhibit 337, which reads, "Net worth statement at December 31, 1944, and December 31, 1945"—

A. Yes.

Q. —did you make the various entries, each of the various [2035] entries on that exhibit which you see before you—withdraw that.

(Testimony of Augustus V. Brady.)

With respect to each of the entries on this Exhibit 339 did you put them all there because Mr. Fleming told you to?      A. Yes.

Q. Is it your testimony, then, that the basis of the inclusion of each entry on Exhibit 339 is a direction to you by counsel for the Government to put the entry on the paper?      A. Yes.

Q. Would your testimony be the same with respect to Exhibit 337 which has to do with the net worth at December 31, 1941?      A. Yes.

Q. Would your testimony be the same with respect to all of the exhibits which you discussed with Mr. Fleming and all the supporting schedules which you discussed with him?      A. Yes.

Q. Did you follow his directions in each case whether or not you yourself felt that they were in accordance with the accepted principles of accountancy?

Mr. Fleming: I object to that question, your Honor; argumentative.

The Court: Overruled.

Mr. Fleming: This witness was put on to——

The Court: I ruled, counsel.

Mr. Fleming: Yes, your Honor. [2036]

The Court: You have the question in mind?

The Witness: No.

The Court: Will you read it, Mr. Reporter?

(Last question read by the Reporter.)

A. I felt that they were——

Mr. Fleming: May it please the Court, may I be

(Testimony of Augustus V. Brady.)

heard on that matter? And call your Honor's attention to a citation? I raised the question because this might possibly open up an extended field of inquiry and I would like to call attention to your Honor's precedence on the subject.

The Court: Very well. The answer will be stricken pending the argument upon the objection.

Mr. Fleming: I have here a memorandum with the citation from the case of United States against Schenck. The language which I would like to present to the Court, a copy for counsel, directing your attention to the—after your Honor has read the quotation.

This witness is offered as a summary witness of the Government's contention. I believe it is correct to say that in each case in the charts which he testified about he testified they were made up pursuant to my direction and at my request. He is offered only as a witness to present the Government contentions.

The Court: The question is now——

Mr. Fleming: So his personal opinion [2037] is——

The Court: No, that isn't the question; that isn't the question. The question is, if I am correct—if I am wrong, correct me, both of you—is whether or not he accepted your directions regardless of whether he thought the directions which you gave him were or were not in accord with good accounting practice.

Mr. Sullivan: Exactly, your Honor.

(Testimony of Augustus V. Brady.)

Mr. Fleming: That is asking for his opinion.

The Court: Well, I am going to overrule the objection. I don't see this case gives you any aid or comfort whatsoever. The objection will be overruled. You may proceed, Mr. Sullivan.

Q. (By Mr. Sullivan): Would you like to have the question read again? A. Yes.

Mr. Sullivan: May I have the question read, your Honor?

The Court: Yes.

(Question read by the Reporter.)

The Court: You have already answered the question which I struck from the record.

A. I felt they were in accordance with accounting principles.

Q. (By Mr. Sullivan): First of all, May I have a yes or no answer to the question: Did you follow the directions of Mr. Fleming regardless of whether or not you felt they were—

Mr. Fleming: That question assumes there is a conflict and I submit it is not susceptible to a yes or no answer. [2038]

The Court: Overrule the objection.

A. I can't see where the conflict was there.

Q. (By Mr. Sullivan): Would you just answer that yes or no? Did you follow his directions?

A. I followed his directions, yes.

Q. Now, your further statement is that you felt that each of the entries was in accordance with good accounting practice? A. Yes.

Q. Are you in doubt about that.

A. I said yes.

(Testimony of Augustus V. Brady.)

Q. I thought by the inflection of your voice——

Mr. Fleming: I object to that as argumentative, if the Court please.

The Court: All right, disregard it, ladies and gentlemen.

Q. (By Mr. Sullivan): Now, upon Mr. Fleming's direction, Mr. Brady, did you satisfy yourself that the references you gave in the various exhibits—I am now referring to all the exhibits supporting the entry that you put down——

Mr. Fleming: If the Court please, that is asking for the witness' opinion whether he satisfied himself or not.

Mr. Sullivan: Asking for a physical act.

Mr. Fleming: That in the Schenck case that question is objectionable, not covering matter purportedly set forth by the Government exhibits in the presentation of this witness. [2039]

The Court: Overruled.

A. I took Mr. Fleming's instructions in regard to the amounts and references, and exhibits.

Q. Well, did you yourself look at the transcript?

A. In some instances, yes.

Q. Did you yourself examine the exhibits?

A. Yes.

Q. Well, did you satisfy yourself from an examination of the exhibits or the evidence, wherever you had examined them, that in those instances the references supported what you put down on the paper?

A. I believe so. I would say substantially so.



(Testimony of Augustus V. Brady.)

Q. Now, do you recall any instances where you put down an entry and there wasn't, it wasn't supported by the evidence?

A. Not that I can think of offhand, Mr. Sullivan.

Q. Now, Mr. Brady, I think you told me that in a net worth calculation if you omitted any assets at the beginning of the period, for example, that should have been included your whole calculation would be subject to change, wouldn't it?

A. That's correct.

Q. And if conversely at the end of the period you had put in assets which shouldn't be put in there, then your whole calculation would again be subject to adjustment?

A. That's right.

Q. And I think you told me in my illustration that the purpose [2040] of this net worth method as used by you accountants in the Treasury Department is to reconcile an increase against reported income, is that right?

A. Yes.

Q. Now, tell me first of all, and I will direct your attention to Exhibit 339, which is a net worth statement for '44 and '45, tell me first of all, if you will, if you, in preparing this exhibit, included assets belonging to people other than the defendant Chin Lim Mow?

A. Not to my knowledge.

Mr. Fleming: If the Court pleases, that is the ultimate question of fact for the Jury. He is attempting to elicit an opinion from this witness. This witness was not presented for an opinion—merely presented as having prepared certain tabulations at my direction.

(Testimony of Augustus V. Brady.)

The Court: Overruled.

Q. (By Mr. Sullivan): May I have your answer?

A. Not to my knowledge I didn't. There again I might state that these figures that I inserted on this schedule were done under direction of Mr. Fleming.

Q. Well, are you placing the responsibility now on Mr. Fleming for their entry here, or are you taking it?

A. No, I am not taking the responsibility for these figures. I was instructed to make certain computations which Mr. Fleming asked me to do and that is what I did. That is all these [2041] represent.

Q. Mr. Brady, have you before you there—I have Exhibit 278 in evidence, it may not be the number—but it is entitled “Supporting schedule detail of cash,” is that it?

A. I got 345, Mr. Sullivan.

Q. 345, is it?           A. Yes.

Q. That's detail of cash?

A. That's correct.

Q. Now would you kindly read for me on the schedule detail of cash, read for me the names on the first bank account which appears on that schedule?           A. Chin Sue Ngor and Wong Ying.

Q. Now, do you identify Wong Ying as the wife of the defendant?           A. Yes.

Q. Do you identify Chin Sue Ngor as the daughter of the defendant?

A. I don't, no. That was an item as I mentioned I was instructed to include that item and that has

(Testimony of Augustus V. Brady.)

been stipulated to, as I understand, by you.

Q. No, I only stipulated to the amount in the bank account, I didn't stipulate that the daughter's bank account was Mr. Chan's bank account. Did you examine my stipulation?

A. Well, yes, the amounts were read off to me.

Q. If you will examine it you will find I did not stipulate [2042] to it, Mr. Brady, take my word for it.

You find a bank account then in the name of the daughter and wife as your first entry?

A. Yes.

Q. Now, do you find as your second entry on this—what do you find there?

A. Wong Ying and Bertha Chan.

Q. Bertha Chan is the daughter, isn't she?

A. Yes.

Q. How about the third item?

A. Wong Ying and Bertha Chan.

Q. That is the daughter again? A. Yes.

Q. The next item is what?

A. B. H. Chan and Wong Ying.

Q. That is the husband and wife?

A. That's right.

Q. Now, the next item?

A. B. H. Chan and Ying Wong Chan.

Q. That's the husband and wife?

A. That's right.

Q. And the next account?

A. John J. Allen, Jr., trustee account.

Q. And the next account?

A. Admay Company. [2043]

(Testimony of Augustus V. Brady.)

Q. You're familiar with Admay Company?

A. No, sir, I am not.

Q. You remember, you were sitting here in court during the trial, of course? A. Yes.

Q. You heard its name mentioned?

A. Yes.

Q. Now, I will show you Exhibit 13, Admay Company partnership return of income, and ask you to read off to me the name of persons who are reported as partners in that return?

A. According to this partnership return the partners' shares are May Taam, Janet Chan, Bertha Chan, Alvin Chan, Chin Lim Mow and Norman Chan.

Q. Now, the next one is Wong Ying Chan. Mrs. Chan, is it not? A. That's right.

Q. Now, how about the next one?

A. Wong Ying Chan.

Q. After that?

A. Chin. Wong Ying, May Sue Chan, and Janet Chan.

Q. Now, Wong Ying is Mrs. Chan and Janet Chan are the daughters, are they not?

A. Yes.

Q. All right. Now, then is it a fact here that you have incorporated in your various schedules all of the bank accounts which are set forth in your Exhibit 345 irrespective of in [2044] whose names that appear on that exhibit?

A. That's correct.

Q. That is included in your net worth calculation? A. That's right.

(Testimony of Augustus V. Brady.)

Q. Is that right? Do you find any place on Exhibit 339—I will direct your attention to Exhibit 339 and ask you if you find there an entry on your balance sheet for the Tai Sun Company?

A. Yes.

Q. I will show you Exhibit 23 in evidence, the tax return of Alvin Chan, and ask you if you find on there income reported from the Tai Sun Company?

A. Yes.

Q. And I will show you Exhibit 29, the tax return of Norman Chan, and ask you if you find on there the income reported from the Tai Sun Company?

A. Yes.

Q. Now, have you included in your balance sheet a figure representing the investment of either Alvin Chan or Norman Chan in the Tai Sun Company?

A. I don't know if they have an investment in there.

Q. Well, do you know if you have a figure in there?

A. It is reported here, doesn't necessarily say they have an investment in there.

Q. If you pick up income in a tax return it is a pretty good [2045] lead, isn't it, that there is an asset from which the income comes?

A. If the income had been reported correctly.

Q. All right. Now, my only question is your net worth computation, your balance sheet, rather, contains any entry representing an investment of either Alvin Chan or Norman Chan in the Tai Sun Company?

A. No.



(Testimony of Augustus V. Brady.)

Q. Now, you mentioned to me a little while ago that as far as the bank accounts were concerned you have included the bank accounts which are in the children's name as well as those which are in the names of Mr. Chan and his wife; isn't that correct?

A. That is correct.

Mr. Fleming: I don't believe there was any such testimony, your Honor. Testified he has included bank accounts in the stipulation, he hasn't testified he has included the bank accounts in the children's name.

The Court: I will allow the question.

Q. (By Mr. Sullivan): Now, did you also include in the—strike that.

By reference to Exhibit 339, can you tell me whether you included the war bonds which were registered in the names of the children?

A. As far as I know they were not. [2046]

Q. They were not included. Now, aside from the war bonds and aside from the bank accounts and disregarding personal clothing and furniture, have you included in your balance sheet any other assets of May Taam, the daughter of the defendant?

A. Not to my knowledge.

Q. Aside from—except making those exceptions I just did, namely, war bonds, personal clothing, furniture and bank accounts, have you included in any of your balance sheets which you have discussed with Mr. Fleming any assets belonging to Wu Taam?

(Testimony of Augustus V. Brady.)

A. I don't know as if we have. I don't think we have.

Q. Norman Chan?

A. I don't believe we have.

Q. Norma Wong Chan?

A. I don't believe we have.

Q. Alvin Chan?           A. No.

Q. Bertha Chan?        A. No.

Q. Janet Chan Lee?

A. Not to my knowledge we haven't.

Q. Ada Chan?           A. No.

Q. Wurley Wong?

A. Well, unless some of this property was carried under the [2047] name of Wurley Wong, it might be.

Q. Madeline Chan?

A. Not to my knowledge.

Q. Eleanor Chan?

A. Not to my knowledge.

Q. Mrs. B. H. Chan?

A. Yes, Mrs. B. H. Chan and Mr. B. H. Chan; this net worth represents the combined net worth of both husband and wife.

Q. Does it include assets carried in the name of children?           A. As far as I know, yes.

The Court: This might be an opportune time to take a recess. Take a recess for a few minutes, ladies and gentlemen of the jury.

(Short recess.) [2048]

(Testimony of Augustus V. Brady.)

Q. (By Mr. Sullivan): Mr. Brady, referring to your balance sheets again which indicate net worth at—that is, assets and liabilities at December 31, 1941, and December 31, 1944, and December 31, 1945, with the exception of the personal clothing and furniture and war bonds, are there any assets standing in the name of any of these following persons which, to your knowledge, stand in both names and you have not put in your exhibits: May Taam, Wu Taam, Norman Chan, Norma Wong Chan, Alvin Chan, Bertha Chan, Janet Chan Lee, Ada Chan, Worley Wong, Madeline Chan and Eleanor Chan?

A. Mr. Sullivan, I might say that this net worth statement that I prepared was done under the direction of Mr. Fleming. The items that appear on here I did not verify each individual myself, so I wouldn't know whether assets that might be owned by the defendant were carried under other names. These items were put down under instructions.

Q. My question is this, Mr. Brady: With respect to these names, these 11 people whose names I have read to you, are there to your knowledge any assets with those exceptions that I gave you carried under their names which you have not put in?

A. Not to my knowledge, no.

Q. Now I show you the exhibit 1, the defendant's 1945 income tax return, and ask you to examine the attachment; and I will direct your attention to—well, I will ask you if [2049] you find reported on the return an item of income from American-4?

A. Yes.

(Testimony of Augustus V. Brady.)

Q. Do any of your balance sheets or schedules include an entry for American-4? A. No.

Q. I will ask you to examine that same exhibit and tell me if you find that there is an item of income from Chan Company, Emeryville? Do you see that? A. Yes.

Q. Do any of your exhibits, that is, Exhibits 333 through 345 and supporting exhibits, included an entry for Chan Company of Emeryville?

A. Mr. Sullivan, you are asking me to compare income with an investment. It could be possible Mr. Chan had no investment there but did derive some income from it.

Mr. Sullivan: I move to strike what could be possible as a conclusion and opinion of the witness. I am only asking certain physical facts concerning these papers, if your Honor please.

A. But you are asking me to compare two different sets of figures.

The Court: Motion granted and the jury is instructed to disregard it.

Q. (By Mr. Sullivan): I am just asking you to answer my [2050] question yes or no, Mr. Brady.

A. I do not see an investment for the American-4 for the Chan Company on this statement.

Q. Now, I will direct your attention to the Hing Wah Tai. Do you find that on Exhibit 1 reported as an item of income?

A. For what year, Mr. Sullivan?

Q. I will show you——

(Testimony of Augustus V. Brady.)

Mr. Sullivan: Have you got Exhibit 58, Mr. Clerk?

Mr. Fleming: May we have the last question answered?

Mr. Sullivan: He says no, it isn't on here.

The Court: Did you answer the question, Mr. Brady?

A. I say I do not see it here, your Honor.

Q. (By Mr. Sullivan): I will ask you to examine 251, Mr. Brady, which is the 1945 partnership return of income for Hing Wah Tai, and direct your attention to the partners' distributive share and in particular to the fourth line, Chan Churk Kwen, \$317.50. Do you see that there?

A. Yes, I do.

Q. And Chan Churk Kwen has been identified by the Government in this case as the name of Chin Lim Mow, do you recall that? A. Yes.

Q. Do you find on any of those exhibits an entry for Hing Wah Tai?

A. Yes. In 1941, see, partnership interest in Hing Wah Tai, [2051] \$1,250.

Q. All right, now, tell me the year of the partnership return you just picked up the income item from?

A. This is a 1945 partnership return.

Q. Now, do you find an entry for—either an entry of an asset item or liability item either at December 31, 1944, or December 31, 1945, on any of your schedules or exhibits? A. No, I do not.

Q. You have, of course, Exhibit 339, Mr. Brady,



(Testimony of Augustas V. Brady.)

or do you have an entry with respect to the Lions Den?      A. Yes.

Q. Now, is that the same property as the Kwo Hing Wah building? Do you recall that, sitting here in Court?

A. Yes, I think it has been referred to the same property. On the 1947 return there is an investment there of \$25,000 as cost at the time it was sold, as the—1947, Mr. Sullivan?

Q. No, I am going to ask you about 1945.

A. I mean that is where we got the figure from.

Q. That is where you got the figure from?

A. Yes.

Q. All right. Now, is that figure which you have included a figure for the building or for the Kwo Hing Wah partnership?

A. That figure was taken from the 1947 return as Mr. Chan's investment in the Lions Den property as just—if I may see the 1947 return I could explain it better for you, Mr. Sullivan. [2052]

Q. All right, I will get it for you in just a minute. I show you Exhibit 10, which is the tax return which you have requested (handing document to the witness).

A. Yes, here it is shown on the 1947 return. He has "946 Grant Avenue, cost 1943, \$25,000."

Q. From your examination of that return, tell us if that does not represent a building?

A. It would appear so.

Q. It does not represent an investment in a partnership equity, does it?

(Testimony of Augustas V. Brady.)

A. We haven't got it recorded here as an investment. We have the return, the 1947 return, \$25,000, and that is what we have here as cost.

Q. And that refers to an asset value for a building, doesn't it?

A. That I wouldn't, except reading this return, I wouldn't know.

Q. Don't you remember the testimony of people that came in from the Tai Company establishing the cost of the building, the Lions Den building, and the number of tenants, one-half of the title was in one-fifth and the other half of the title was in fifths, and the first group of five sold to the second group of five? Don't you remember that testimony from Mr. Tom Roscoe? [2053]

A. I remember something like that.

Q. All right. I am asking you if the entry of that on your balance sheet, exhibit 339, if those figures represent an asset which is a building? Does that represent an investment in a partnership?

A. On this statement here we have it Mr. Chin Lim Mow's investment in the Lion's Den at \$25,000. We have the sale in 1947 of \$25,000 representing the same property.

Q. All right. It is talking about property, then?

A. Well, yes.

Q. Sale of property?

A. Well, this is property here.

Q. So that your entry in exhibit 339 represents the cost of a piece of property, isn't that correct?

A. As far as I can see here, it does.

(Testimony of Augustas V. Brady.)

Q. As a matter of fact, you are picking it off the capital gains schedule, aren't you?

A. That is right.

Q. I show you now exhibit 253 and ask you if this is the partnership return of the Kwo Hing Wah?  
A. Yes.

Q. Do you have any place on your exhibits an entry reporting the defendant's investment in the Kwo Hing Wah Company?

A. Not as such. We have it as the Lion's Den.

Q. That is merely an investment in a building, you told me, [2054] isn't it?

A. Well, Mr. Sullivan, I think I will have to come back to my statement that I mentioned before, that I did not make an investigation of this case. I merely made this computation based upon the instructions from Mr. Fleming.

Q. Yes. Now—pardon me, Mr. Brady.

A. He told me to put down \$25,000 for investment in the Lions Den.

Q. Mr. Brady, all I am asking you is whether you find on that or can find for me on a schedule—do you know what I am driving at?  
A. Yes.

Q. And your answer is you don't have that, that you have included the investment in the Kwo Hing Wah Building in any of your schedules, under the Kwo Hing Wah co-partnership?

A. Under that name, yes.

Q. Can you find any other name it is included under?

(Testimony of Augustas V. Brady.)

A. I think it has been referred to as the Lions Den.

Q. You told me that was the building, didn't you?

A. Lions Den is the—possibly that is another name for Kwo Hing Wah Company.

Q. Look, Mr. Brady, you are an accountant. Isn't there a difference between an investment in an asset and an investment in a partnership?

A. Well, if the partnership asset is just one item, for [2055] instance the partnership was just ourselves, that would be the one asset.

Q. If you and I were in a co-partnership in a grocery store and building, and including the cost of the building only, it would be only included in costs of assets, wouldn't it?

A. If I owned the building and you didn't contribute—if I contributed the building, it would be my investment.

Q. Let's suppose we have equal contributions in the co-partnership.

Mr. Fleming: Well, if it please the Court, I submit this entire line of questioning is argumentative.

The Court: I find it very interesting and I think the jury will, too.

Q. (By Mr. Sullivan): Let's assume, Mr. Brady, for the sake of my illustration, that in this case the contributions are equal to the co-partnership and the co-partnership owns the building.

A. Yes?

(Testimony of Augustas V. Brady.)

Q. Let's assume the cost of the building is \$50,000. If we are equal partners and there are two of us we might break down the cost of the building as being \$25,000 each, isn't it?

A. That is right.

Q. But we would still have to audit the partnership to find out what our equity in the partnership was, wouldn't we?      A. Yes. [2056]

Q. That is all I am asking here. Have you done that?

A. No, I didn't do that, Mr. Sullivan.

Q. All right. Now, I will show you exhibit 7, which is the 1944 return of the defendant. Do you find on there an item of income from a source called America?      A. Yes.

Q. Tai Foy, spelled T-a-i F-o-y?      A. Yes.

Q. Fook Chin, spelled F-o-o-k C-h-i-n?

A. Yes.

Q. Lucky, spelled L-u-c-k-y?      A. Yes.

Q. Do you find entries on any of your schedules reporting investments, assets or liabilities in connection with any of those?      A. No.

Q. Now, by way of illustration, Mr. Brady, if, for example, there were an investment of \$100,000 in any one of those companies, or in any company by the defendant, at December 31st, 1944, that would increase his opening net worth, wouldn't it?

A. Yes, I think so, if you are assuming, Mr. Sullivan, we could assume that was opened and closed during the year and there is some income from the source, probably you——



(Testimony of Augustas V. Brady.)

Q. You don't know whether it is open or not, do you?

A. You are assuming something, too, Mr. Sullivan. [2057]

Q. In other words, you don't know either way, whether it was opened at December 31, 1944, or December 31, 1945, do you?

A. That is correct.

Q. And you haven't any calculation in any of your balance sheets at December 31st, 1944, or at December 31st, 1945, either by way of assets of liabilities for any of these companies, have you?

A. Correct.

Q. Now, I wonder, Mr. Brady, if you would be good enough to look at Exhibit 338, which is entitled, "Details of miscellaneous deposits."

A. Yes, I have it.

Q. Now, you have a certain total on this exhibit, haven't you, representing the total monies or things of value on deposit with people on behalf of or for the benefit of the defendant at December 31, 1944?

A. Yes, sir.

Q. And what is that figure? A. \$26,000.

Q. Now, then, you carry that figure over to the total figure, carry the total figure over and insert it in Exhibit 339, do you not, which the ladies and gentlemen have before them? I will direct your attention to the seventh—

A. Yes, I am looking for my copy.

Q. Well, maybe the clerk can get you the orig-

(Testimony of Augustas V. Brady.)

inal. It is [2058] entitled, "Net worth at December 31, 1944, and 1945."

A. I have it here now. I have it, Mr. Sullivan.

Q. My question was, you find that figure of—I beg your pardon, it is the third item down.

A. \$26,000, yes.

Q. So that this is merely a supporting detail, and you take the totals off of this, which is Exhibit 338, and you bring them down into 339, is that correct? A. That is right.

Q. Now, you told us that at the opening of the year 1945, that is, at December 31st, 1944, that figure was what? A. \$26,000.

Q. And at the close of the year was what?

A. \$22,000.

Q. Do you find, referring to the Exhibit 338, do you find—will you kindly read for me the last item? A. "Deposit, Mandarin Hotel"?

Q. Please.

A. "Deposit in Mandarin Theater," I should say, "\$5,000."

Q. And do you find you have an entry there at December 31, 1945? A. Yes.

Q. What is that? A. \$5,000.

Q. Now, those are both treated as assets by you, aren't they? [2059] A. That is correct.

Q. You have given as a reference to the testimony, the testimony of Mr. Hogan at pages 580 and 585? A. 579, 580 and 585.

Q. Yes. I will hand you the official transcript and ask you if you will be good enough to examine

(Testimony of Augustas V. Brady.)

it and tell us where you find that the defendant had an asset of \$5,000 involved in a deposit of the Mandarin Theater at December 31, 1945.

A. Well, he discusses a \$2,000 and a \$3,000 deposit.

Q. That is 1944, Mr. Brady, isn't it?

A. Yes.

Q. Let's get on to 1945. I will direct your attention to page 587.

A. "So that the end of the balance in 1945 was \$5,000 plus interest, I believe." Is that what you have reference to, Mr. Sullivan?

Q. Yes. Is that what you have reference to, Mr. Brady?

A. Yes, I think it is, Mr. Sullivan.

Q. Well, that is a liability, isn't it? Look at the testimony closely—

A. Well—

Q. That is not an asset, that was the balance of \$5,000, was it, that—

A. (Interposing): Just a minute. I didn't refer to 587 in my mention here. Cash of \$5,000 has been considered as a [2060] liability on our net worth statement.

Q. That is right, but you put another \$5,000 here as an asset, so you wiped it out, didn't you?

A. No, I don't think that is the same item. I believe this has to do with the—I see a \$5,000 here at the end of 1944, but right offhand I don't see it at the end of 1945.

Q. Let me ask you this question to shorten it,

(Testimony of Augustas V. Brady.)

then: If that second \$5,000 is not an asset but is a liability, as you have shown it on Exhibit 339, then this schedule which is 338 is to that extent erroneous, is it not?

A. If it wasn't on there. If the deposit wasn't on there, yes, but without reading all over the transcript I wouldn't really want to say yes or no right now, Mr. Sullivan. But at the time we put it down there, I say I was instructed to put that in at the beginning and end of the year.

Q. Well, if the opportunity presents itself, Mr. Brady, you might take a look at the testimony. Now, I will direct your attention to a number of items that you have on some gambling here. Would you read those to me, please, beginning about two-thirds of the way down the balance sheet, Exhibit 339, beginning with the word "Watsonville."

A. "Watsonville, Bakersfield, Alviso, Yosemite Club, Hollywood Club, 3600 San Pablo, Emeryville and The Palms."

Q. All right. Now, you have opposite "Watsonville" the notation, "Gibbons, page 116." [2061]

A. Yes.

Q. What does that mean?

A. Have you got the transcript there?

Q. Yes, but I mean, what does the reference there mean?

A. It means that Mr. Gibbons testified that he drove the defendant down to the club in Watsonville.

(Testimony of Augustus V. Brady.)

Q. And what is "opposite Bakersfield"? "Gibbons, page 119." What does that mean?

A. Same thing, that he had gone down to a place there operated by the defendant.

Q. And does it mean the same thing all the rest of the way down, down to "The Palms"?

A. I believe so, with the exception of the Hollywood Club. I had Gibson there, but I believe Mr. Filice testified there was a Hollywood Club.

Q. Now, I will show you the transcript, and let's take these up and tell me if you find there—show me the testimony that you are relying upon when you say that—strike that.

The effect of this for balance sheet purposes, Mr. Brady, from your point of view in preparing this, is that there was a gambling club in operation at Watsonville at December 31, 1944, is that what that means?      A. No, sir.

Q. Well, what does it mean?

A. It means there were operations in these properties stated [2062] during the period of time, but the amounts in investment we would not know, so we put nothing down for the investment.

Q. Well, then, the "X" here means—

A. It means the value had been undetermined.

Q. Oh. Well, then, that didn't enter into your balance sheet computation at all, did they?

A. No, sir.

Q. So that—

A. (Interposing): With the exception. Well, they might in this case, Mr. Sullivan, that they do



(Testimony of Augustas V. Brady.)

enter into it in that we have the next item, "Bank roll, cash for above clubs, \$50,000." I was instructed to put that down as bank roll for operating these clubs.

Q. All right. So then, pursuant to instructions, or taking your entries that you have made as instructed, what that set of entries means is that there were a number of clubs in operation some time during 1945, but they had a bank roll of \$50,000 at the beginning of the year and a bank roll of \$50,000 at the end of the year, is that correct?

A. Yes.

Q. And do you take the position that that is based on the evidence in this case?

A. Yes, based on the evidence of Mr. Overstreet, who raided the place, got \$43,000 and said there was over \$9,000 left he did not pick up. [2063]

Q. Well, let's take Watsonville, page 116.

A. Yes?

Q. You can read to me the testimony there which you rely upon in inserting this as an operation.

A. "Directing your attention to Watsonville"—this is page 116—"Q. Directing your attention to Watsonville, I ask you if during the year 1945 you made any visit to Watsonville at the request of the defendant? A. Yes, I did.

"Q. What was your business in Watsonville?

"A. Well, I went down——"

Then you asked for a foundation:

(Testimony of Augustas V. Brady.)

“We ask that a foundation be laid, if your Honor please,” and the Court said, “All right.” Then Mr. Fleming said,

“Where did you go in Watsonville?”

“A. That I don’t know. The Hollywood Club on Main Street, that is all I know about it.

“Q. At whose direction?”

“A. By his directions.

“Q. By ‘his,’ do you refer to Chin Lim Mow?”

“A. Yes, sir.

“Q. What instructions did he give you with respect to your visit to Watsonville at the Hollywood Club?”

Then you said, “I ask that a foundation be laid, if your Honor please,” and the Court said, “I think there is sufficient [2064] foundation laid. You may answer the question.

“Q. He sent me down there. I don’t know. I would generally get a package of money—I don’t know what it was. It was supposed to be money. I don’t know whether it was or not. It was all wrapped up.”

Then Mr. Fleming asked the question, “You would go down there and pick up a package?”

“A. Yes, sir.

“Q. What would you do with the package after you got it? A. Bring it back to him.”

That was the basis, Mr. Sullivan, and, according to that—

“By ‘him,’ you refer to Chin Lim Mow?”

“A. Yes.

(Testimony of Augustas V. Brady.)

“Q. Did you make those trips in 1945 to this place in Watsonville?”

“A. I believe there were a few trips made at that time. If it was open, I did.”

That was the basis for using this [2065] reference.

Q. All right, in making this entry, did you consider Mr. Gibbons’ testimony at page 135 of the transcript where, after talking about Watsonville, he was asked this question:

“You do not want to state positively that you went down there in the year 1945, do you?”

“Answer: I won’t state when I was there. I was there, yes, sir.”

Did you consider that testimony at page 135 at all?

A. I got to go back to my question, Mr. Sullivan, I put these down at the instructions of Mr. Fleming. I didn’t evaluate the evidence.

Q. I understand.

A. I believe it is up to the Jury, I put down what I was instructed to. This, I think, represents the Government’s viewpoint of the case.

Q. Now, you have given as a reference here, “Bakersfield, page 119.” I wonder if you would point out to us the evidence that you have as the basis for this entry in your balance sheet?

A. This is on page 119 (118):

“Directing your attention to Bakersfield, I ask you if you went to Bakersfield on business for Chin Lim Mow?”

(Testimony of Augustas V. Brady.)

“Once I believe it was.

“When was that? [2066]

“That I couldn’t say. It has been some time back. It might have been any time. I don’t know exactly. I won’t recall the year. Anyway I went down there once. I got a package there and I brought it back to him. They said it was money. I don’t know. I didn’t see it. It was wrapped up.

“Where did you deliver the package?

“To him.

“Chin Lim Mow?

“Yes, sir.”

That is Bakersfield.

Q. Do you find any reference in the testimony to Bakersfield in the year 1945?

A. He said—1945 as such isn’t mentioned right—wait a minute: “Was that in the year 1945,” and then he said, “That I don’t know. I don’t remember. It might have been, it might not. Whether it was in 1945, I don’t remember.”

Q. Where are you reading from now?

(Witness indicating.)

Q. That is Alviso?

A. Excuse me. No, in Bakersfield I don’t see 1945 mentioned in that.

Q. Let’s take Alviso then as long as you are there.

A. “I direct your attention to Alviso, and ask you if you were ever sent to Alviso on business by the defendant? [2067]

“Yes, sir.

(Testimony of Augustas V. Brady.)

“Was that in the year 1945?”

“That I don’t know. I don’t remember. It might have been, it might not. Whether it was in 1945 I don’t remember.

“What business took you to Alviso?”

“I believe I took a package or to get a package, I don’t recall.”

Q. Is that the testimony that you base that reference on?      A. Yes.

Q. Now, I believe you said that you put in an entry of \$50,000 for bank roll, cash for the above clubs. You see that there?

A. Yes, Mr. Sullivan.

Q. What clubs?

A. Well, the place at Watsonville, Bakersfield, Alviso, Yosemite Club, Hollywood Club, and 360 San Pablo, The Palms.

Q. Can you tell me, can you refer us to any exhibit or any page of the testimony that indicates a bank roll of \$50,000 for all of those clubs you have just mentioned?

A. Except that Mr. Gibbons said he moved the money around from one place to another.

Q. The fifty thousand?

A. Well, he said he took money, and we know forty-three thousand was picked up by Mr. Overstreet.

Q. Let’s see where you get the fifty thousand; first tell me [2068] that, please, where does this fifty thousand come that you have on that balance sheet, where does that come from?



(Testimony of Augustas V. Brady.)

A. \$50,000 was an amount that Mr. Fleming told me to insert.

Q. Well, just throw it in?

A. Because—no, because the testimony of Mr. Overstreet.

Q. Well, then it is based upon the testimony of Inspector Overstreet?           A. Yes, sir.

Q. Now, let's see Inspector Overstreet's testimony. I believe he gave us a figure of \$42,259.40, didn't he? You recall that?

A. Yes, didn't he say there was some other money he didn't pick up?

Q. Yes, and that was \$5,000 in coins that he didn't take; isn't that correct?           A. Yes.

Q. Let's add that. That is \$47,259.40, and this is what he got when he raided the Club, isn't that right?           A. That's right.

Q. You recall his telling me that the name of the Club that he raided was the Wai Yuen Club?

A. I wasn't present when—I read the transcript—at the time I was not present when he was testifying.

Q. I am sorry to ask you a question which takes you at a [2069] disadvantage, I didn't mean to.

But I will ask you to look at 92, page 92, and tell me if Mr. Overstreet did not identify the Club that he raided as the Wai Yuen Club?

A. He mentions here The Palms. "And The Palms was only the name of the building, isn't that correct?"

"That is correct."

(Testimony of Augustus V. Brady.)

Q. Go up a little further.

A. "Well, if I mentioned the name Wai Yuen to you——

"I believe that is the name of the Club, yes.

"And The Palms was only the name of the building, isn't that correct?

"That is correct."

Q. He said it used to be a saloon, didn't he?

A. And, "There had been a bar or saloon there for some years before that by the name of The Palms \* \* \*

"That is correct."

Q. All right. So then Mr. Overstreet, and he is the man you have on your exhibit——

A. Yes.

Q. Mr. Overstreet raided the Wai Yuen Club located at a saloon called The Palms, and he picked up \$47,259.40, including—he found \$47,259.40 and picked it up all but \$5,000? A. Yes.

Q. Is that correct? Are you basing your entry of fifty [2070] thousand on this incident of forty-seven thousand? A. Yes.

Q. All right. Now, can you call our attention to any testimony in this record connecting up this incident with Watsonville, Bakersfield, Alviso, Yosemite Club, Hollywood Club, 3600 Emeryville?

A. I think Mr. Gibbons mentioned he took packages down and brought some back.

Q. Took this forty-seven thousand?

A. He didn't say how much—didn't he say here he took money down and brought it back?

(Testimony of Augustas V. Brady.)

Q. Are you able to base, to connect this amount of money upon which you base your fifty thousand, are you able to connect that up with any of those former clubs whose names I read?

A. I was instructed to put \$50,000 as an estimate of the amount to carry those clubs.

Q. All right. Now, were you similarly instructed to put it in at the end?

A. Yes, sir, so it had no effect on the income for the year.

Q. Except that do you recall the testimony of David Shew, do you not, that the Wai Yuen Club was closed for the last three months of 1945? Do you recall that testimony?

A. I think he said it could have been, wasn't open to his knowledge. [2071]

Q. Now, let's go back to your schedule, Mr. Brady, for 1944 and 1945. I believe that you have come down to totals of net worth at those two periods, have you not? A. Yes.

Q. And then you have subtracted one total of net worth from the other and in that way you arrive at either an increase or a decrease, and I will ask you in this case if you arrive at an increase?

A. An increase.

Q. So that that represents then an increase in net worth from December 31, 1944, to December 31, 1945, of \$228,681.67, is that right?

A. Yes, that is right, Mr. Sullivan.

Q. Now, you have taken and made, without

(Testimony of Augustas V. Brady.)

going into detail, certain additions to net worth along the lines of the general formula explained to me and certain subtractions from net worth and arrived at a figure of \$270,914.39?

A. That's correct.

Q. Now, I will ask you if included in this first figure which you have carried over from your balance sheets which the ladies and gentlemen have, if there is included in that figure items carried under the names of the various children and other people than the defendant and his wife?

A. Carried under their names?

Q. Yes. [2072]           A. Yes, I believe so.

Q. Do you, when you come down to your reconciliation that we talked about, do you reconcile the income figure with the income reported by the defendant alone, or do you reconcile the income with the income reported by all the family on Exhibit 342?

A. We made a reconciliation with the income reported by Chin Lim Mow and his wife.

Q. All right. So that in your reconciliation then, which is Exhibit 342, you start with a figure which represents assets, or includes assets, carried under the name not only of the defendant but carried under the name of members of his family, is that right?           A. That is right. [2073]

Q. And as a matter of fact even you include there assets carried under the names of strangers, like Howard Chang and Evelyn Lee Chang, is that right?           A. That is right.

(Testimony of Augustas V. Brady.)

Q. You have included in there \$100,000, for example, have you not, in the Howard Chang and Edmund Lee Chang trustee account?

A. At the beginning of the period.

Q. All right. Now, when you come down to reconciling your net taxable income figure you only reconcile it with the income that is reported by two of the people, not all of the group of assets, isn't that right?

A. Reported it to the—the person evidently who got the money.

Q. Are you basing that on the facts now—

Mr. Sullivan: I move to strike that answer, your Honor.

The Court: The motion is granted to strike.

The Witness: We made a reconciliation with the husband and wife, Mr. Sullivan.

Q. (By Mr. Sullivan): You did not reconcile it with the reported income of, for example, the members of the family, did you?

A. That's correct.

Q. Now, in one of your charts, Mr. Brady, you added back the taxes paid by the members of the family? [2074]

A. Yes.

Q. And that was according to an exhibit which Mr. Fleming introduced here and in what sum of money was that, by the way?

A. Where I have tax paid for others?

Q. Yes. A. \$27,239.09.

Q. Now, if your analysis of net worth includes



(Testimony of Augustus V. Brady.)

assets carried under the name not only of the defendant but of members of his family, and it was necessary to reconcile the taxable net income against the reported income of all the members of the family, then we would have to add that \$27,239.09 back in as a non-deductible expense, wouldn't we? If we were doing that? A. We did that.

Q. You did that in your second schedule, but not in the first schedule.

A. The first schedule, no.

Q. Now, if I add in——

Mr. Sullivan: I wonder, your Honor, if the ladies and gentlemen of the jury have 342 before them. May I ask that? It is entitled, "Understatement of income based on increase in net worth."

The Court: 340?

Mr. Sullivan: 342, your Honor.

The Court: I have it marked 340, "Understatement of income based on increase in net worth plus non-deductible [2075] expenditures and minus non-taxable income, 1942 to 1944, inclusive."

Mr. Sullivan: No, the other, your Honor, is the year 1945. It is Exhibit 342, I am sure.

The Court: You have it, ladies and gentlemen?

A Juror: Says 287 here.

Mr. Sullivan: On the photostat of the first trial, your Honor; it has been renumbered 342 by the Government.

Q. Mr. Brady——

The Witness: Here's a copy, your Honor.

The Court: Thank you.

(Testimony of Augustus V. Brady.)

Q. (By Mr. Sullivan): Mr. Brady, then referring to your Exhibit 342 you find there on the fourth line down, "plus non-deductible expenses." If we add in there the figure for family taxes, considering this on the family basis, if we added that in there it would in effect add \$27,239.09 to this figure of \$270,914.39, wouldn't it? A. Yes.

Q. It would adjust that figure by that much money? A. Yes.

Q. And the total of that, I think you have some place, is that—that is 298—

A. \$298,153.45.

Q. Now, Mr. Brady, if it should appear by the evidence in this case that the \$100,000 that you have charged to the [2076] defendant because of this Pacific National Bank account of Evelyn Lee Chang and Howard Chang should not be charged to him, we should take that out of the figure, shouldn't we? Out of your calculation?

A. You're asking me to deduct \$100,000?

Q. Not yet, just saying if under the evidence—strike that.

You have put that in there at the direction of the prosecutor, haven't you? A. Yes, I have.

Q. If it should appear in this case under the evidence and it should appear that the \$100,000 is not chargeable to the defendant and that the prosecutor's theory is wrong, then this should be eliminated from your calculation, shouldn't it?

A. Not all of it no, because at the end of the year there was some 40—

(Testimony of Augustus V. Brady.)

Q. \$17,500?

A. No, it was more than that, Mr. Sullivan. At the end of the period I believe there was in those accounts——

Q. You are looking at the wrong account. I am talking about Howard Chang and Evelyn Lee Chang accounts. A. Oh.

Q. Pacific National Bank. You have charged in various places in your schedules and included in your calculation \$100,000, haven't you?

A. I would like to get my schedule first so I can follow you, [2077] Mr. Sullivan.

Q. You go right ahead. Mr. Brady, pardon me——

A. I am looking for the detail of cash.

Q. Exhibit 345. I will ask you on the detail of cash if you don't charge the defendant with a balance in the account of \$17,500 at December 31, 1944? See it? A. That is '45.

Q. I mean 1945. Pardon me. A. Yes.

Q. December 31, 1945.

A. Be nothing at the beginning, be nothing at the——

Q. It didn't open in the beginning.

A. Yes.

Q. You didn't give us anything, then. Now, you have charged him with \$70,000 deposited in that account on January 3, 1946? A. That's right.

Q. And you have charged him with the real estate deposit of twelve five made somewhere around October 15, 1945? A. That's right.

(Testimony of Augustus V. Brady.)

Q. Is that \$100,000? A. That's right.

Q. All right. Now, if it is found from the evidence in this case, or if it is found there is no evidence to support your contention that there was a \$50,000 bank roll for seven clubs as you indicated on your Exhibit 338 at December 31, 1945, [2078] we would take that out, wouldn't we?

A. According to your assumption, yes.

Q. Well, you are presenting the Government theory, aren't you? A. Yes.

Q. Now, I am asking you to assume that the Government's theory is not supported by the evidence, Mr. Brady. You understand that I am not asking you to pass upon any facts. Now, I'll—

A. Mr. Sullivan, that last \$50,000 didn't change the beginning and end of the year.

Q. Not talking about the beginning of the year, talking about the end of the year. A. O.K.

Q. Now, I will show you Exhibit 186 in evidence introduced by the Government and ask if you find some liabilities on that schedule at December 31, 1945? Would you kindly read them?

A. This is 40, Mr. Sullivan.

Q. Well, just have to keep going; I'm sorry I didn't open it for you.

Will you kindly read liabilities to the Wai Yuen partners and tell me if you don't find \$48,000 worth of liabilities?

A. I have here a balance sheet marked Chin Lim Mow, doing business as Wai Yuen Club, Wai

(Testimony of Augustus V. Brady.)

Fung, and Wai Lee Company, balance December 31, 1945, liabilities—first, we have— [2079] can I read them to get this amount?

Q. No, just want you to add up for me the liabilities, the last five liabilities that you find there and tell me if the total is not \$48,000?

A. Well, if you are going to use that balance sheet—

Q. Well, I am using it.

A. This balance sheet has cash of \$220,000 and a net worth of \$256,000, so if you consider those liabilities are in order, then this net worth of \$256,000—is that what you mean?

Q. I just want you to add up those four items.

A. These four items (indicating)?

Q. Yes. And it is \$48,000, isn't it?

A. Yes.

Q. If you add up the similar liabilities at December 31, 1944, you come to the sum of \$32,000, will you not, referring you to 186 in evidence?

A. Yes.

Q. And the increase in the year 1945 is \$16,000, is it not? A. That's right.

Q. Now, have you included in your balance sheet any place, Exhibits 337 to 345, provision for liability of \$32,000 at December 31, 1944?

A. We did not—

Q. And liabilities in the sum of \$48,000 at December 31, 1945? [2080]

A. We did not use this balance sheet, Mr. Sullivan.



(Testimony of Augustus V. Brady.)

Q. I am not asking you whether you used it or not, but my question is did you in any place include liabilities in those amounts that I have mentioned?

A. I have to look at the Wai Yuen balance sheet.

Q. You have a schedule of that, don't you?

A. I believe I do, Mr. Sullivan. We did not use those liabilities.

Q. Now, if we found that those—or if the theory of the Government that the liabilities did not exist was not supported by the evidence and there was evidence that they did exist, we would add the increase or \$16,000 to my column there?

A. Well, if you are using that balance sheet why don't you use the cash on hand of \$165,000?

Q. Now, Mr. Brady—

Mr. Fleming: The witness is entitled to explain his answer.

The Court: He is asking questions.

Q. (By Mr. Sullivan): Now, referring you to Exhibit 186, I will ask you if you find the liability at December 31, 1945, for withholding taxes payable in the amount of \$5,219.80?

A. On this balance sheet, yes. [2081]

Q. And did you include it in your balance sheet? A. No.

Q. Now, I wonder if you would be good enough to give us the total of these four figures, \$100,000, \$50,000—here is the total I reached, and you can verify it. I have \$176,219.80. Probably \$171,219.80.

Now, if it should be found that your schedule is

(Testimony of Augustus V. Brady.)

not accurate with respect to Mr. Hogan's liability, you're carrying it as an asset, that would increase that to \$176,219.80?

A. Well, if you want to use those computations, why, your figures there are correct.

Q. All right. Now, you arrived, we arrived here at a total of \$298,153.48 representing the taxable net income of assets, from assets, and based upon assets carried in the name of defendant, members of his family, into which we had added the family taxes paid, you recall that? A. Yes.

Q. We will subtract these adjustments of \$176,219.80, and I find that I arrive at a figure of \$121,933.68, is that correct?

A. No, I wouldn't say it is correct, Mr. Sullivan.

Q. Is it a correct calculation?

A. If you are taking this \$50,000 as a deduction, that didn't change during the year, we are taking this \$270,000 as the increase during the year. You are taking \$270,000 as the income, and there is \$50,000 there. [2082]

Q. I am asking you to assume that \$50,000—you are talking about the gambling club fifty thousand?

A. At the beginning and at the end of the period.

Q. I am eliminating it from the end only upon the assumption that the club was closed.

A. You're assuming it had fifty thousand at the beginning period.

Q. I am not eliminating this figure of fifty

(Testimony of Augustus V. Brady.)

thousand because you have it in your balance sheet, you understand that. You have this fifty thousand dollars at the end——

A. You have it at the beginning and end.

Q. You have it at the end, don't you?

A. Yes.

Q. All right, I am asking you to assume an elimination at the end.

A. If you want to make that assumption, yes.

Q. All right, I arrive then at this adjusted figure of \$121,933.68. You find the calculation there?

A. That calculation is correct as you have it there, yes.

Q. Will you kindly tell me—I would like to reconcile that figure against the income reported by Mr. Chan and his family. Will you kindly tell me how much money Mr. Chan reported in 1945?

A. I have just Chan and his wife.

Q. All right. [2083]

A. Of \$54,341.66, but I don't have right here the amount reported——

Q. Now—— A. ——by the children.

Q. Mr. and Mrs. Chan we have——

A. \$54,341.66.

Mr. Sullivan: May I have this exhibit marked for identification, Defendant's Exhibit next?

The Court: Let it be marked. How long are you going to be with Mr. Brady?

Mr. Sullivan: Just about to finish, your Honor.

The Court: I was just about to suggest, without

(Testimony of Augustus V. Brady.)

criticism of you, you had just about exsanguinated him.

The Court: DC-2.

Mr. Sullivan: I hope that your Honor is not taking that literally.

The Court: No, I prefaced my remark by saying, not saying it in criticism of you.

Q. (By Mr. Sullivan): I will show you Defendant's Exhibit DC-2—is that what it is, Mr. Clerk?

The Clerk: Yes.

Q. (By Mr. Sullivan, continuing): And ask you if you are familiar with that exhibit as a calculation from the tax returns in evidence made during the last trial of the amounts of reported income, income reported on the tax returns of the [2084] family?

A. I don't think I recall seeing this, Mr. Sullivan.

The Court: Speak up, Mr. Brady.

The Witness: I don't think I recall seeing this. This is—oh, this is a total—

Q. (By Mr. Sullivan): Total reported income.

A. Yes.

Q. From the tax returns in evidence. Does that refresh your memory as to the amount of total income reported by the family? A. Yes.

Q. And what is that figure which is there?

A. \$75,449.57.

Q. Seventy-nine thousand what?

(Testimony of Augustus V. Brady.)

A. Four forty-nine fifty-seven.

Q. If I add the total reported income of Mr. Chan and family, what figure do I get, please?

I have the figure here of \$129,791.22. Do you find that to be a correct addition?

A. It looks correct.

Q. Now, if I reconcile——

The Court: Just a minute. One of the jurors is questioning your calculations.

A Juror: 123.

Mr. Sullivan: It should be 30 right here (indicating).

A Juror: A hundred and twenty-three [2085] thousand.

Mr. Sullivan: This was a three——

A Juror: A hundred and twenty-three thousand.

Mr. Sullivan: \$123,791.23.

Your Honor, pardon me a moment?

Mr. Hubner points out it should be one thirty-three, is that correct?

The Witness: A hundred and thirty-three thousand.

Mr. Sullivan: I will start over again.

Mr. Fleming: Mr. Sullivan, you have the figure 75,000 at the last trial, 449.

The Witness: Seventy-five thousand.

Q. (By Mr. Sullivan): All right, let me start over again, Mr. Brady, please.

A. Seventy-five thousand——

The Court: Got a courtroom full of accountants here, and can't even add a simple set of figures.



(Testimony of Augustus V. Brady.)

Q. (By Mr. Sullivan): Give me Mr. and Mrs. Chan's reported income again, please.

A. \$54,341.66.

Q. Give me the family's. A. \$75,449.57.

Q. Now, how many cents?

A. Fifty-seven cents.

Q. What total do you get, before we announce it publicly? A. \$129,791.23. [2086]

Q. All right. Mr. Brady, assuming that the taxable net income on the net worth basis should be found to be the figure that I have calculated here upon the assumptions that I gave you, the net worth basis included assets carried in the name not only of the defendant but also his family and containing additions of non-deductible expenses representing taxes paid not only by him but by—for his family, do you find that this figure which I have of \$121,933.68 reconciles with reported income? A. No, it is less.

Q. I beg your pardon?

A. I say that figure there is less.

Q. Is less. Now, if it is less, does that indicate an underpayment, an underreporting or of an overreporting of income based upon these facts and these schedules?

A. Based upon your assumption, then it would appear that there was an overreporting.

Mr. Sullivan: No further questions.

The Court: I think we will take the adjournment now.

Going to adjourn now, ladies and gentlemen,

(Testimony of Augustus V. Brady.)

until tomorrow morning at 9:30. I again admonish you, as I am required to do by law, not to discuss the case among yourselves or with others, nor are you to form or express any opinion concerning the case until the matter is finally submitted to [2087] you.

Tomorrow morning at half past nine.

(Thereupon an adjournment was taken to the hour of 9:30 o'clock a.m., tomorrow, Friday, October 10, 1952.) [2087-A]

October 10, 1952, at 9:30 A.M.

The Clerk: United States of America vs. Chin Lim Mow, on trial.

Mr. Fleming: Ready, your Honor.

Mr. Sullivan: Ready, your Honor.

The Court: You may proceed.

#### AUGUSTUS V. BRADY

was recalled as a witness for the Government, previously sworn.

#### Redirect Examination

By Mr. Fleming:

Q. Mr. Brady, yesterday afternoon you were asked a question with respect to an accountant's viewpoint as to obtaining a starting point as clear and accurate as possible in making computations of increase of net worth, do you remember that?

A. Yes, I do.

(Testimony of Augustus V. Brady.)

Q. Now, from an accounting viewpoint, do you find a sworn statement under oath of the man whose taxes are being computed to be the best possible starting point?

Mr. Sullivan: I object to that, if your Honor please, calling for a conclusion and opinion of the witness, invading the province of the Jury.

The Court: Objection will be overruled.

A. Yes, I did. [2088]

Q. (By Mr. Fleming): Now, if that statement is false, and again referring you to an accountant's point of view, do you adjust that starting point as you discover items which have been omitted from it?      A. Yes, sir.

Q. In making the computations which you have made, is it the Government's theory that the Government has been able to uncover all the assets and liabilities of the defendant, Chin Lim Mow?

Mr. Sullivan: I object to the question, if your Honor please, calling for a conclusion and opinion of the witness. Calls for an answer which is stated in the usual course of a criminal proceeding by counsel for the party, not by the witness, as to what the theory is.

The Court: Objection will be overruled.

A. May I have that question again, please?

The Court: Read the question, Mr. Reporter.

(Question read by the Reporter.)

A. We attempt to uncover all the liabilities and

(Testimony of Augustus V. Brady.)

all the assets in arriving at as nearly correct a net worth at any particular date as possible.

Q. (By Mr. Fleming): Do you mean by that that you make the best available attempt?

A. Yes, sir.

Q. Now, I will direct your attention to Exhibit CQ, the [2089] Defendant's exhibit identified by the witness, Wallace, of taxes paid out of the John J. Allen, Jr., trustee account, and direct your attention to the item under the heading, "Newspaper." I will ask you whether you recall the testimony of the witness, Wallace, that that relates to premises of 809 Sacramento Street?

A. I think I have a recollection of that, yes, sir.

Q. And do you further recall Mr. Wallace's statement that those may or may not be payments for a mortgage on that place—on that property?

A. Yes, I think he did mention that.

Mr. Sullivan: I object to that, if your Honor please—pardon me, Mr. Brady. That is not my recollection of the testimony. If counsel will refer to the testimony of Mr. Wallace, refer that testimony to me, that is not my recollection of the testimony.

The Court: The objection will be overruled. The Jury will regard the testimony and will remember it and have it in mind.

Mr. Fleming: Will you read that last question and answer, please, Mr. Reporter?

(Question and answer read by the Reporter.)

(Testimony of Augustus V. Brady.)

Q. (By Mr. Fleming): Did you include that in the assets of the defendant, Chin Lim Mow?

A. No, I don't believe we did. [2090]

Q. Why not?

A. Well, we didn't have any knowledge of it at the time this statement was being prepared.

Q. Similarly, with respect to the questions asked you by Mr. Sullivan with respect to a company known as American Four Company and Hing Wah Tai, did you include those in your list of assets of the defendant, Chin Lim Mow, as of 1945?

A. No, sir, we did not.

Q. Why not?

Mr. Sullivan: Well, I will object to that question as to why not, if the Court please, on the ground that the testimony here elicited from the witness by Mr. Fleming at the outset, if I remember correctly, was that Mr. Brady did not personally investigate this case at all.

Mr. Fleming: That is correct, your Honor. But the witness was asked yesterday whether or not he had included certain assets, and he replied no; and I am developing that answer which was developed on cross-examination.

Mr. Sullivan: That is precisely my point. I merely asked if the assets were in his schedule or not. As your Honor will remember, there was some colloquy between us on that exact point and your Honor permitted me to ask that question, so all the witness did was consult the schedule to see whether any asset was there, but as to why or why not that



(Testimony of Augustus V. Brady.)

asset wasn't included or was included, this witness can't [2091] testify because he has already said he didn't personally investigate this case.

The Court: I will overrule the objection.

A. It wasn't entered. I believe you and I talked about it in preparing the statement, but we had no definite knowledge of the amount of his investment so it was left out.

Q. (By Mr. Fleming): And is your answer the same with respect to the Lucky Company, America Company and Tai Lowe, Fook Chin, as to why you did not include those?

A. We had no definite knowledge as to what his investment was, so it was left out.

Q. As a matter of fact, in your tabulation, other than the bank rolls and the fixtures of the Wai Yuen Club, you didn't show the value of assets of any of these gambling clubs, did you?

Mr. Sullivan: I object to the question as leading and suggestive.

The Court: Objection will be overruled.

A. No, we did not.

Q. (By Mr. Fleming): You put down in your tabulation what?

A. We put down an "X," which would indicate, "Amount unknown," and rather than put an estimate, we left that blank, just as we did with personal living expenses. We had no definite knowledge as to the exact amount of his living expenses, and therefore we put down an "X" indicating "amount unknown." [2092]

(Testimony of Augustus V. Brady.)

Q. And in adding and subtracting of figures, then, you treated those "X's" as zeros, did you not?

A. Yes.

Q. Now, you recall yesterday that counsel for the defense then took your figures which you had computed of the defendant's income for the year 1945, and to that made certain calculations on the board?

A. Yes, I recall that.

Q. Do you know to what I am referring?

A. Yes.

Q. That figure, I believe, was for the year 1945, defendant's income was how much?

A. \$270,914.39, as shown on Exhibit 342, which was put in evidence.

Q. Defendant's net income?

A. That is, defendant and his wife, Mr. Fleming.

Q. That is the figure which you gave Mr. Sullivan from the calculations?

A. Yes.

Q. Then do you recall his tabulating certain items and reaching the figure of \$176,219.80, referring to the figures still on the blackboard?

A. Yes, I see the figure there, but I was trying to reason out how he arrived at that one.

Q. Well, we will go through this. [2093]

A. Yes?

Q. You recall his adding up these items and asking you to subtract that, the net income figure to which had been added—

A. (Interposing): Here is one hundred seventy-six here (indicating on blackboard).

(Testimony of Augustus V. Brady.)

Q. You were asked by Mr. Sullivan to subtract that?  
A. Yes.

Q. And in arriving at that figure, he first gave you the figure of \$100,000 to subtract, did he not?

A. That is correct.

Q. I will write these in a different colored ink. And that was the property which we have identified as having gone through the Pacific National Bank, Evelyn Lee Chang, trustee, is it not?

A. That was the \$70,000 deposited on January 3rd, 1946, in the Pacific National Bank of \$70,000, and the balance in the Howard and Evelyn Lee Chang trustee account at the end of 1945 of \$17,500, and deposit of \$12,500 through Mr. Ogilvie, making up the \$100,000.

Q. Now, in making that subtraction you were asked to assume that the figure was not supported by the evidence, do you recall that?

A. Yes, I have a recollection of that.

Q. Now, I will direct your attention to a check for \$12,500, signed "Evelyn Lee Chang," Government's Exhibit 240; a check for \$2,000, Government's Exhibit 243; a check for \$84,000, [2094] Government's Exhibit 235; the bank statement on the Pacific National Bank, Government's Exhibit 239; and ask you if these items all relate to that figure of \$100,000?  
A. I believe they do.

Q. And I will direct your attention to an entry in the books of the Gerdon Land Company——

A. (Interposing): Oh, I might add to that, Mr.

(Testimony of Augustus V. Brady.)

Fleming, I did not investigate this case, but from the record of the testimony I believe that was brought out. That is, my knowledge would be limited to that.

Q. To the testimony?

A. I did not have anything to do with the investigation of this amount, but from the recollection of the testimony that this all had to do with the deposit, because——

Q. Well, I have a——

Mr. Sullivan: Pardon me, Mr. Brady. If your Honor please, I would like to call something to your attention. Mr. Fleming asked this gentleman if this is not supported in the evidence. That is not the question I asked Mr. Brady yesterday. The question I asked him yesterday was if it should appear under the evidence that the \$100,000 is not chargeable, and that the prosecutor's theory is wrong. That was my question to him.

The Court: You were asking him to assume that.

Mr. Sullivan: Yes, your Honor. Not whether there was [2095] any tangible document in evidence. We all know that these checks are in evidence. My question was directed to this: Mr. Brady said he had put these things in his balance sheet because the prosecutor told him to, and I asked him this question at page 2077.

I didn't ask him if there was any evidence in the record. I pointed that out. I asked him if the prosecutor's theory was wrong. I would like to correct the question. That is the question I asked him.

(Testimony of Augustus V. Brady.)

The Court: Very well, the record will show that.

Q. (By Mr. Fleming): Mr. Brady, I show you Government's Exhibit 56, ledger of Gerdon Land Company, account number 37, which is a credit to the account of B. H. Chan, \$70,000, and ask you if that credit relates to this account of \$100,000?

A. Well, if——

Mr. Sullivan (Interposing): Just a minute, if your Honor please, I object to that question. I object to that question as calling for a conclusion and opinion of the witness, and deliberately invading the province of the Jury. That is the very point in this case that the ladies and gentlemen have to decide, if your Honor please.

The Court: I am inclined to agree with you. Objection sustained.

Q. (By Mr. Fleming): To what property does that credit of \$70,000 relate? Give me the address, please. [2096]

Mr. Sullivan: I respectfully say to your Honor all Mr. Brady is doing is reading what he sees in that book.

The Court: That is what he is asked to do.

A. That is all I am going to do.

Mr. Sullivan: This question is a little bit different.

The Court: The last question wasn't. That is what he is going to do.

A. This sheet, Account 37, it is, "Wurley Wong, C. C. Chan," and that is scratched out and "B. C.



(Testimony of Augustus V. Brady.)

Chan'' is inserted. And on 5000 Broadway there is——

Q. (By Mr. Fleming): Well, that is the question. The question was to what address does that account relate? A. 5000 Broadway.

Q. To what address does this \$12,500, the check which you identified before and which was the source of testimony by Norman Ogilvie, to what address does this relate? A. 5000 Broadway.

Q. Is that the same property? A. Yes.

Q. Let's go to the next item which you were asked to subtract. I believe that was an item of \$50,000, and in referring to that item you were asked to assume—you were asked:

“Question: Now, if it is found from the evidence in this case, or if it is found there is no evidence to support your contention that there was a \$50,000 [2097] bank roll for seven clubs as you indicated on your Exhibit 338 at December 31, 1945, we would take that out, wouldn't we?”

“Answer: According to your assumption, yes.”  
And you were further asked:

“Now, I am asking you to assume that the Government's theory is not supported by the evidence.”

Mr. Sullivan: Well, I ask that counsel read the intervening question, too. It is misleading if he leaves that out.

Mr. Fleming: Well, if your Honor please, I am entitled to examine this witness.

The Court: He is entitled to read such portions of the testimony as he chooses, and if you wish to

(Testimony of Augustus V. Brady.)

make any amendments or corrections, you may read such portions as you choose.

Mr. Sullivan: Your Honor please, I made the statement because counsel made that against me the other day.

The Court: All right, let's not get into any colloquy.

Q. (By Mr. Fleming): You recall being further asked to assume the Government's theory is not supported by the evidence? Do you recall that question yesterday with respect to this item of \$50,000? A. Yes, I recall that.

Q. Will you tell us again what that item of \$50,000 represents in your tabulation, I believe it is 342?

A. That would represent the bank roll used to operate the [2098] various gambling places.

Q. What figure did you put in at the beginning of the year? A. \$50,000.

Q. What figure did you put in at the end of the year? A. \$50,000.

Q. Does that figure affect in any way this figure of \$270,000 which you have calculated as net income for 1945?

A. No, it doesn't, because I used the same figure at the beginning and end of the period.

Q. Under Mr. Sullivan's assumption you were asked to subtract that figure at the end of the year but leave it in at the beginning of the year?

A. Yes.

(Testimony of Augustus V. Brady.)

Q. Now, do you recall any evidence indicating the defendant was still in the gambling business in 1946?

A. I think that will be shown in the 1946 return, Mr. Fleming.

Q. I show you Exhibit 9, 1946 tax return of the defendant, Chin Lim Mow, and ask you if you find that during that year he reported income from the Wai Yuen Club?

A. Yes, I find there is some income from the Wai Yuen Club in 1946.

Q. How much?

A. Reported \$30,447.83.

Q. Do you recall any evidence indicating the defendant was still in the gambling business [2099] in 1947?

A. I think the 1947 return will show that, Mr. Fleming.

Q. I will show you Exhibit 10, 1947 tax return of Chin Lim Mow, and ask you if you find income reported from the Wai Yuen Company during that year?

A. Yes, the 1947 tax return discloses income in the Wai Yuen Club, Toe Yen, Wai Fong and Wai Lee Company, \$25,549.54.

Q. You were asked certain questions with respect to the amount of \$50,000, do you recall?

A. Yes, sir.

Q. Do you recall those questions?

A. Yes, sir.

Q. Do you recall, also, that some \$42,000 was

(Testimony of Augustus V. Brady.)

picked up by Overstreet in the raid on February 4th, 1945, and not returned until February 14, 1945?

A. Yes, I have a recollection of that.

Q. That was a raid on The Palms?

A. I believe I recall that. I think I read that. I wasn't present when Mr. Overstreet testified, but I believe it is in the record.

Q. I show you 184, the book identified by David Shew as the Wai Yuen Club's, and ask you if you find, according to that record, that the club was operated from the period February 6th to February 14, 1945?

Mr. Sullivan: I object to that, if your Honor please, as calling for a conclusion and opinion of the witness, because [2100] the witness, David Shew, testified that these cash books represented the gross receipts not only of the Wai Yuen Club but of the Wai Fong and Wai Lee lotteries.

The Court: Objection will be overruled.

A. Just reading this record of cash receipts for the month of February, I find under the date of February 6th a gain of \$1,567.20.

Q. (By Mr. Fleming): My question related to February 6th to 14.

A. Excuse me.

Q. Do you find, according to the books, the figure indicating operation on each of those days?

A. Yes, sir, I do.

Mr. Sullivan: Well, if your Honor please, may I have—I object to the question as unintelligible, because the books refer to three operations and

(Testimony of Augustus V. Brady.)

counsel is referring to an operation, obviously of the Wai Yuen Club. He is asking about the operation of the Wai Yuen Club, and the books have already been identified by Mr. Shew as representing in the cash book the operation of three clubs and a consolidated entry.

Mr. Fleming: I submit the objection is argumentative in nature, going to the weight of the testimony and not the propriety of asking it.

Mr. Sullivan: It goes right to the admissibility. If [2101] I have a composite figure on which are the Standard Oil, Union Oil and Shell Oil and try to reach a balance only as to the operation of Shell, I can't look to the composite figure because it might represent the Standard Oil as well.

Mr. Fleming: Mr. Sullivan took the same figures to prove the club was closed during 1943 through 1945. I can take the same figures then, to prove it was open during February 6th to 14th.

Mr. Sullivan: I did not take the same figures to prove it was closed. I took the testimony of Mr. Shew, and as corroborative of his testimony.

The Court: If you are going to show the club was opened——

Mr. Fleming (Interposing): My purpose is to show according to the books the club was open at that time, and I believe the figure itself will indicate.

The Court: Objection will be overruled.

A. Record of cash receipts for the month of



(Testimony of Augustus V. Brady.)

February shows an income and expenses for the February 6th through 14th, inclusive.

Q. (By Mr. Fleming): During that period \$42,000 was down at the City Hall, was it not, according to the testimony of Inspector Overstreet?

A. That is my recollection, yes. I believe it was returned to him, according to Mr. Overstreet's testimony, of the 14th.

Q. Now, have you assumed, then, that there was as part of [2102] the bank roll at least another \$8,000 with which the club could operate during this period of time?

Mr. Sullivan: I object to that, as to what the witness assumes in his calculation, being an assumption apparently based on other evidence; beyond the issues of this case, and incompetent evidence.

The Court: The objection will be overruled. This man is qualified as an expert. You have indulged in assumptions throughout the entirety of your cross-examination, and I will indulge in the same privilege.

A. Yes. You discussed this with me when we compiled this net worth statement, and you said that \$50,000 would represent the reasonable amount of bank roll to operate the operation.

Mr. Sullivan: I move to strike what counsel told the witness as hearsay.

The Court: Motion is denied.

A. That is why we put the \$50,000 in, your Honor.

(Testimony of Augustus V. Brady.)

Q. (By Mr. Fleming): The third item which you were asked to subtract were certain figures from Exhibit 186, balance sheet, Wai Yuen Club, or Chin Lim Mow, doing business as Wai Yuen, Wai Fong and Wai Lee Companies, as of December 31, 1945; and do you recall that you were asked to subtract some \$16,000 increase in Wai Yuen liabilities to Chan Bat and others, and some \$5,219.80 of taxes payable?

A. That is right. [2103]

Q. Now, is it the Government's theory, and have you followed that theory in preparing your chart, that those liabilities are fictitious?

Mr. Sullivan: I object to the question as incompetent evidence, calling for a conclusion and opinion of the witness.

The Court: Objection will be overruled.

A. Yes, sir.

Q. (By Mr. Fleming): And is it further the Government's theory that Exhibit 186, balance sheet, is completely unreliable?

Mr. Sullivan: Same objection, if your Honor please. The Government is bound by the evidence they introduce.

The Court: Same ruling. The Government is entitled to have its theory of the case expounded.

A. Yes, sir.

Q. (By Mr. Fleming): How about—well, look at the balance sheet from which Mr. Sullivan asked you to take these figures, and I will ask you if you find a certain figure of cash on hand?

(Testimony of Augustus V. Brady.)

A. Yes, I do.

Q. And how much is that figure?

A. "Cash on hand and in bank, \$220,407.24."

Q. Two hundred twenty thousand—

A. Four hundred seven twenty-four.

Q. Now, in making your computations of net worth, how much [2104] of that figure of \$220,000 odd dollars did you include as chargeable against defendant? A. \$1,133.90.

Q. Was this figure of one thousand a figure you carried over into the chart which you identified?

A. Yes, I have. It is part of the investment in the Wai Yuen Club.

Q. And the difference between those two figures is how much? A. \$219,273.34.

Q. And if you add that figure to the figure which you arrive—what figure did you arrive at of the net worth of the defendant as of December 31st, 1945? A. \$1,115,155.04.

Q. If you add that figure of \$219,273.34, what total do you get? A. \$1,334,428.38.

Q. And, of course, if you added those, it would subtract from the \$21,000 of liabilities which you previously discussed with Mr. Sullivan?

A. I didn't get that.

Q. Well, will you subtract the \$16,000 and \$5,000 from that figure? Will you do that? \$5,219.80—

A. Oh.

Q. Will you subtract that figure?

A. Yes. I have \$1,308,208.58. [2105]

Q. So that by accepting the figures in that ex-

(Testimony of Augustus V. Brady.)

hibit you would have a net worth of some \$200,000 in excess of the net worth which you actually charged the defendant with, would you not?

A. Well, instead of just taking \$16,000, which would be an increase of the liabilities, Mr. Fleming, you should take the full liabilities as shown here, which is some \$38,000 instead of that \$16,000.

Q. Well——

A. Taken at the end of the year.

Q. What would your answer be, then, Mr. Brady? \$150,000 increase, roughly?

A. Oh, from this—yes, approximately.

Q. You were also asked with respect to a third item of \$5,000 deposits on hand with Mr. Hogan, do you recall that?      A. Yes.

Q. I believe you testified you referred to a deposit item in connection with the Mandarin Theater as of December 31st, 1944?

A. Yes, I believe I did.

Q. Did you find that—that referred to a one-eighth interest in the Mandarin Theater, did it?

A. Yes.

Q. Did you find that the one-eighth interest in the Mandarin Theater was ever entered in the Gerdon books during the year [2106] 1945?

A. Well, I didn't make an inspection of the Gerdon books, but according to your instructions I put it in as a deposit in 1944 on this schedule of miscellaneous deposits.

Q. And did you then put in the one-eighth in-

(Testimony of Augustus V. Brady.)

terest in the Mandarin Theater of \$10,500 at the end of 1944 and end of 1945?

A. Yes, sir, I did.

Q. Did you also include at the end of 1945 \$5,000, Hogan and Vest loan? A. Yes.

Q. Was that an error? A. Yes.

Q. So that to that extent your computations are in error? A. Yes.

Q. You said you included nothing for living expenses? A. That is right.

Q. If we include \$5,000 of living expenses during the year 1945, would that make a computation the same as the one you have previously given us?

A. I would say yes.

Q. You were then asked to subtract one hundred seventy-six thousand and some odd dollars, and reached a mathematical figure of \$121,933.68, do you recall that? A. Yes.

Q. And you were then asked, I believe, to add up or calculate [2107] the income reported by the various members of the Chin family, do you recall that? A. Yes.

Q. And I believe you said that roughly some \$54,000 had been reported by Chin and his wife, and some \$75,000 by the other members of the family? A. That is correct.

Q. Well, now, is it the Government's theory that a large part of the fraud consisted of having Chin's income reported by the members of the family in order to put his income in the lower tax bracket, as illustrated by your chart on the board?



(Testimony of Augustus V. Brady.)

Mr. Sullivan: I object to the question, if your Honor please, calling for a conclusion and opinion of the witness; asking the witness to pass upon not only the figure, but also upon the elements of the offense; asking the witness to give his opinion upon the subject of fraud, invading the province of the Jury.

The Court: Objection will be overruled.

A. Yes, sir, that is your theory. That is the Government's theory.

Q. (By Mr. Fleming): And if its views are correct, the result produced the tax discrepancy which is illustrated in that chart on the board, does it? A. I would say yes. [2108]

Mr. Fleming: No further questions.

Mr. Sullivan: I have just one or two questions, Mr. Brady, please.

### Recross-Examination

By Mr. Sullivan:

Q. Let's get this thing straight about Mr. Hogan and the Mandarin Theater, and I will please have you refer to Exhibit 339. Do you find that on Exhibit 339, when you first came to court yesterday you submitted it in a form which gave a liability in the last entry at December 31, 1945?

A. That is correct.

Q. Now, that liability is how much, please?

A. \$5,000.

Q. And that \$5,000 was entered, was it, upon

(Testimony of Augustus V. Brady.)

the basis of testimony of Mr. Hogan that he lent \$9,000 by putting in a promissory note for \$9,000 to the title company, which represented \$7500 of his own money and \$1500 commission, do you remember that?

Mr. Fleming: Well, I don't believe there is any such testimony. I think the testimony was \$5,000 was on deposit at the end of 1944.

Mr. Sullivan: Counsel, I am not talking about that. I object to that interruption. I am not talking about 1944.

The Court: There is no objection pending. Continue your questioning.

Mr. Fleming: May I have the last question read? [2109]

The Court: Read the question, Mr. Reporter.

(Question read by the Reporter.)

A. I believe this \$5,000 was entered here on the testimony of Mr. Hogan that there was \$5,000 due him at the end of 1945.

Q. (By Mr. Sullivan): That is right. The first part of that question, there was money due and the amount was \$9,000, do you recall that?

A. I recall some testimony.

Q. Do you recall the testimony that he had received \$4,000 in cash during the year 1945 and applied to the liquidation of the obligation which was secured by his note, \$500 a month, so that some \$4,000 was paid off against the nine?

A. \$4,000 was put in the safe deposit box.

(Testimony of Augustus V. Brady.)

Q. Yes. A. Yes, I recall that.

Q. That left a balance due at the end of 1945 of \$5,000? A. That is right.

Q. I will ask you to give me a page reference that you stated? A. I had 587.

Q. Isn't the exact page number 586? You might start with 587, the transaction we are talking about, is that what you had in mind?

A. I think we have conceded the \$5,000 was in error. I mentioned that. [2110]

Q. You mean this liability is an error?

A. This deposit of \$5,000 was an error. We are conceding that.

Q. Then I have your schedule wrong. You are going to take it off Exhibit 338?

A. Yes, take it off a deposit, but leave it on as a liability on 339.

Q. All right.

A. The deposit should be \$25,000 less.

Q. So that Schedule 338 should reflect the deposit was an error?

A. Had an error of \$5,000, yes.

Q. Now, just one question further, Mr. Brady: Will you give us this calculation which you made for Mr. Fleming of the cash on hand as a calculation made—withdraw that.

Is it your professional opinion that what you just did for Mr. Fleming by adding back the cash on hand according to Exhibit 186 is in accordance with the testimony of this case and accepted principles of accountancy?

(Testimony of Augustus V. Brady.)

A. I would say it would be the same theory that you submitted to me in various factors as to exhibits.

Q. I am asking you this: Is it your professional opinion what you just did for Mr. Fleming, adding back the cash on hand, is in accordance with settled principles of accountancy?

A. Assuming these facts to be true, yes. [2111]

Q. Well, have you in mind the evidence in this case where David Shew said that the figure cash on hand was used wasn't actual but theoretical? Do you recall that?

A. You asked me if this was a——

Q. I am asking you if you have in mind the testimony of David Shew that that figure which he put there is not an actual figure but a theoretical figure?      A. Yes, I think so.

Q. Do you recall the testimony that David Shew said he had made no allowance for the drawings of the beneficial owners of the club, or beneficial owner, all through those four years, but merely allowed the cash to accumulate?

A. Yes, and that is why we did not use this figure in our computation, Mr. Sullivan.

Q. And do you recall that the whole statement starts with a little note down here, asterisks, in 1942? Do you see the asterisk opposite the "Cash on hand" figure? Will you be good enough to read it?

A. "December 31, 1943, cash on hand and in

(Testimony of Augustus V. Brady.)

bank, \$42,347," with a notation down below, "Book balance. Actual cash on hand unknown."

Mr. Sullivan: No further questions.

Mr. Fleming: No questions, your Honor.

The Court: You may be excused, Mr. Brady.

(Witness excused.) [2112]

Mr. Fleming: May it please the Court, at this time there are some exhibits which I think your Honor has already admitted into evidence but which the record may not so reflect, and I will ask that the following exhibits be admitted into evidence:

157, for identification, being a net worth statement of Wai Yuen Club, September, 1942, submitted by David Chin.

Exhibit 263—

Mr. Sullivan: I wonder if we could take them up seriatim, if your Honor please? It might make it difficult for me to enter objections, this way. Would your Honor have any objection to that?

The Court: I have no objection.

Mr. Sullivan: With respect to the offer of Exhibit 157, I object upon the ground that it is incompetent, irrelevant and immaterial; a balance sheet at a date not tied up with the case, namely, September 30, 1942.

The Court: Objection will be overruled. It will be received in evidence.

The Clerk: Government's Exhibit 157 received in evidence.



(Thereupon the document previously marked U. S. Exhibit No. 157 for identification was received in evidence.)

Mr. Fleming: The next exhibit is 263, schedule of interest omitted from the 20 bank accounts, produced by the witness Farley. [2113]

The Court: Any objection?

Mr. Sullivan: No objection entered on that.

The Court: It will be received.

The Clerk: Government's Exhibit 263 in evidence.

(Thereupon the document identified above was received in evidence and marked U. S. Exhibit No. 263.)

Mr. Fleming: I will next refer to Exhibit 292, schedule letters written by Mr. Farley.

Mr. Sullivan: I know that has been admitted. They are admitted at page 1710, my record so reflects.

The Court: Very well.

Mr. Fleming: 293 and 294, which I am sure are also in evidence.

Mr. Sullivan: I don't find them in evidence, and I would like to interpose an objection on the same ground I did to 263, namely the documents are hearsay as to the defendant.

The Court: Objection overruled. They will be received in evidence.

The Clerk: Government's Exhibits 293 and 294 admitted into evidence.

(Thereupon documents referred to above were received in evidence and marked U. S. Exhibits Nos. 293 and 294 respectively.)

Mr. Fleming: Exhibit 306 and Exhibit 307, 306 being signature cards, Wai Lee Company; and 307 being a transcript [2114] of the bank accounts, I believe.

Mr. Sullivan: I object to the offer of 306, which pertains to other years, or other than 1945, as being irrelevant and immaterial, not within the issues of the case.

The Court: Objection will be overruled. They will be received in evidence.

The Clerk: Government's Exhibits 306 and 307 admitted into evidence.

(Thereupon documents identified above were received in evidence and marked U. S. Exhibits Nos. 306 and 307, respectively.)

Mr. Fleming: Exhibit 308, ledger card of B. H. Chan, Bank of America, Chinatown branch.

The Court: It will be received in evidence.

The Clerk: Government's Exhibit 308 admitted in evidence.

(Thereupon the document identified above was received in evidence and marked U. S. Exhibit No. 308.)

Mr. Fleming: The Government rests, your Honor.

The Court: Well, a consummation devoutly to be wished. I assume you have some motions?

Mr. Sullivan: Yes, your Honor, if your Honor would grant me some time to present them as I feel they properly should be, if your Honor probably could arrange to give the ladies and gentlemen a short recess.

The Court: Well, it is obvious that we can't finish [2115] this case this week. I have to be in Los Angeles, I am advising you now, ladies and gentlemen, on Tuesday and Wednesday of next week. That will be the 14th and 15th. So we will go over until Monday. I will take up those matters with counsel in your absence.

Until Monday, the 13th, and then we will have to finish the case on the 16th, 17th and 18th, because I have to be in Tacoma, Washington, on the 20th where I will be for three months. So I am advising you of that schedule, ladies and gentlemen, so that you may have it in mind.

Mr. Fleming: Yes, your Honor.

Mr. Sullivan: I had this in mind, your Honor, when I made the reference to recess. I just made reference to recess during the time I would read the motion, and at that time I would like to consult your Honor's wishes for time for argument, which I don't believe will be long on the motion.

The Court: Do you intend to produce witnesses?

Mr. Sullivan: Yes. I have them outside, your Honor, and it would be my desire now to discommodate them further. I have had them in readiness for a couple of days and they have been very good about it. I would like to get through with them as soon as possible. I think if I made these motions

right now I could pretty well indicate to your Honor my ideas of the scope of argument, and the matter of those witnesses, so as to save time for everyone. [2116]

The Court: Very well, we will take a short recess, ladies and gentlemen.

(Short recess.)

(The following proceedings were had outside the presence of the Jury.)

Mr. Sullivan: May it please your Honor, the defendant in this case at this time enters two motions, a motion to strike and a motion for judgment of acquittal.

The motion to strike, for the convenience of the Court and counsel, I have reduced to writing. It is entitled, "Motion to strike evidence" and I ask leave of Court to file the motion in that form as supplemented by a short oral motion pertaining to some testimony I have in mind. I hand counsel a copy of the motion.

The Court: Let the motion to strike evidence be filed and supplemented by oral argument.

Mr. Fleming: If the Court please, at this time I would like to file a memorandum with respect to elements of proof with regard to certain citations and quotations.

The Court: It may be filed.

Mr. Sullivan: I also move to strike, if your Honor please, all evidence of the witness George Gibbons pertaining to all of his various trips to Watsonville, Bakersfield, Alviso, Yosemite Club,

Hollywood Club, 3600 San Pablo, The Palms, upon the grounds that such evidence is irrelevant [2117] and immaterial and has not been connected up with the issues of the case, and in form vague and speculative and of such a character as to have no probative value in this case.

Now, before I address myself to your Honor in connection with the motion to strike, both written and oral, may I at this time make a motion for judgment of acquittal?

At the conclusion of the Government's case the defendant in the above-entitled action, Chin Lim Mow, respectfully moves the above-entitled court for an order dismissing the charge contained in the first count of the indictment in the above-entitled action on the following grounds:

1. The evidence is insufficient as a matter of law to justify or sustain a verdict of guilty.
2. The evidence is insufficient to establish a violation of Section 145 (b), Internal Revenue Code, 26 USC Section 145(b).
3. The evidence fails to show that said defendant is guilty of the offense charged in the first count of the indictment.
4. The evidence received in connection with the said first count of said indictment is as consistent with the innocence of this defendant as with his guilt.
5. The evidence shows that there is no substantial evidence of fact which excludes every other hypothesis but that of guilt.



6. The said first count of said indictment fails to [2118] state facts sufficient to constitute a violation of Section 145, Internal Revenue Code, 26 USC Section 145(b).

As ground for said motion and as part of said motion defendant moves and specifies:

(a) That the corpus delicti of the offense attempted to be charged in said indictment has not been established.

(b) That the starting point of the net worth and expenditures method of proving income relied upon by the Government has not been clearly and accurately established by competent evidence.

(c) That the opening net worth of the defendant for the tax year covered by said count 1 of said indictment has not been clearly and accurately established by competent evidence.

The defendant further respectfully moves the above-entitled court for an order dismissing the charges contained in the second count of the indictment in the above-entitled action and for a judgment of acquittal on the following grounds:

1. That the evidence is insufficient as a matter of law to justify or sustain a verdict of guilty.

2. The evidence is insufficient to establish a violation of Section 145(b) Internal Revenue Code, 26 USC Section 145(b).

3. The evidence fails to show that said defendant is guilty of the offense charged in the second count of the indictment. [2119]

4. The evidence received in connection with said second count of said indictment is as consistent with the innocence of this defendant as with his guilt.

5. The evidence shows that there is no substantial evidence of fact which excludes every other hypothesis but that of guilt.

6. Said second count of said indictment fails to state facts sufficient to constitute a violation of Section 145(b) of the Internal Revenue Code, United States Code Section 145(b) of Title 26.

As a ground for said motion with respect to said second count of the said indictment and as a part of said motion, defendant moves and specifies:

(a) That the corpus delicti of the offense attempted to be charged in said second count of said indictment has not been established.

(b) That the starting point of the net worth and expenditures method of proving income relied upon by the Government has not been clearly or accurately established by competent evidence.

(c) That the opening net worth of the defendant spouse for the tax year covered by said second count of said indictment has not been clearly or accurately established by competent evidence.

(d) The evidence fails to disclose that this defendant [2120] wilfully or knowingly attempted to evade and defeat a large part of income tax due and owing by the Chin Wong Shee to the United States Government for the calendar year 1945 by filing or causing to be filed with the Collector of Internal Revenue a false and fraudulent income tax

return for and on behalf of said Chin Wong Shee or in any other manner whatsoever.

May it please the Court, I would like to address the Court briefly with respect to the two motions which I have presented, and I am going to make my remarks with respect to both motions of appropriate length, having in mind that I would like to have some witnesses who are waiting in the witness room give some evidence before the conclusion of today's session.

(Whereupon argument was presented by counsel for the defendant; reported, but not transcribed.)

The Court: The record will show that all motions, including the motion to strike, including the motion for acquittal, are denied.

Bring in the Jury.

Mr. Sullivan: May the record show an exception, if your Honor please, to the Court's order denying the motion to strike, both in written form and orally, and exception, if your Honor please, to your Honor's order denying the motion for judgment of acquittal.

The Court: The record will so show. [2121]

Mr. Fleming: May we have a brief recess, if the Court please?

The Court: Very well.

(Short recess.)

(The following proceedings were had in the presence of the Jury in the courtroom.)

The Court: Proceed.

Mr. Sullivan: If your Honor please, although your Honor has already permitted me to have it noted in the record, for the sake of the convenience of the record may I also make a statement at this time that one of the defense witnesses, Chan Doak Chow, has testified before this Court and Jury on Friday, September 26, 1952, so that we may have an orderly sequence of the witnesses in the record. Your Honor at that time gave your approval to have that testimony in that part of the record just as if it were introduced by the defense when the defense case starts.

Just want to make that notation in the record so the record will be logically clear.

The Court: Very well.

Mr. Sullivan: Call Mr. William Hogan.

The Court: The record will show that the witness Hogan has previously been sworn. [2122]

### WILLIAM HOGAN

was called as a witness by the defendant, previously sworn.

### Direct Examination

By Mr. Sullivan:

Q. Mr. Hogan, you have testified here before as a witness for the prosecution, haven't you?

A. Yes, sir.

Q. Now, are you familiar with the premises at 723-725 Grant Avenue?      A. Yes, sir.

Q. And can you tell the ladies and gentlemen of

(Testimony of William Hogan.)

the Jury generally where that building is located, or where that address is?

A. It is a piece of property on Grant Avenue, west line of Grant Avenue between Sacramento and Clay Streets.

Q. Now, during the year 1945 was there a restaurant on those premises?

A. Yes, there was.

Q. And what was the name of the restaurant, to the best of your recollection?

A. Hang Far Low.

Q. Were you at that time acting as a manager of that property in connection with the collection of rents?      A. Yes, sir.

Q. With whom did you have dealings as the agent for collection of rents, so far as collecting rent from the Hang Far [2123] Low Restaurant? Do you recall the gentleman's name?

A. In the restaurant?

Q. Yes.      A. Mr. B. K. Chan.

Q. That is not Mr. B. H. Chan here, the defendant?      A. No, sir.

Q. Mr. B. K. Chan; is he also known as Chan Bow Kay?      A. Yes, sir.

Q. Now, do you recall an incident in the year 1945 concerning the payment to you of his delinquent rent?      A. Yes, sir.

Q. And can you tell us, please, just what occurred in connection with the payment of this—strike that.

Was this delinquent rent delinquent rent from



(Testimony of William Hogan.)

the Hang Far Low Restaurant?           A. Yes, sir.

Q. And can you place for us the time approximately in 1945 when the incident occurred?

A. Yes, I—it was in September of 1945.

Q. And what, in brief, were the details surrounding the payment of this delinquent rent?

A. Well, the tenant wouldn't pay his rent and it was necessary for us to bring suit. And we had to place a keeper on the premises. When we placed a keeper on the premises, why, then, we got a rush call one afternoon that one of the— [2124] they wanted the keeper to go and wanted to pay the penalty.

Q. By they, do you mean Chan Bow Kay?

A. Yes, Chan Bow Kay, or the Hang Far Low Restaurant. I believe it was a partnership or a corporation, I don't know which.

Q. Then what happened?

A. Well, we were called off the golf course. Mr. McLaughlin, who is the attorney, and myself, come down to Chinatown so that Mr. McLaughlin could take the keeper out of the premises and we received the rental.

Q. Now, do your records show and have you ascertained from your records whether you received some rental from these premises as delinquent rent?

A. Yes, sir.

Q. In September, 1945?           A. Yes, sir.

Q. And how much?           A. \$5,440.

Q. And what was the date on which you received it?

(Testimony of William Hogan.)

A. The date entered in our account is September 11.

Q. Now, do you recall the person from whom you received the rent?

A. Yes, it was a Mr. Chan Doak Chow, I believe.

Q. Well, do you recall where you received it?

A. Yes, I received it at—we received it at Waverly and [2125] Washington.

Q. Who was present at that time when you received it?

A. Mr. Chan Doak Chow, Mr. McLaughlin and myself.

Q. And then did you take the rent back and deposit it in your general office trustee account?

A. No, we took it immediately to the bank, since it was Saturday afternoon.

Q. I see.

Mr. Sullivan: I would like to direct the attention of the ladies and gentlemen of the Jury, if your Honor please, to the translation of the document BT, which is the translation, being defendant's Exhibit in evidence BT-1, the document testified to by the witness Chan Doak Chow in which the date of the document is September 8, 1945, referring to the payment of delinquent rent of \$5,440, and also to the incident of payment of a sum of \$17,000.

No further questions.

(Testimony of William Hogan.)

Cross-Examination

By Mr. Fleming:

Q. This \$5,440 paid in currency?

A. Yes, I believe it was.

Q. What kind of bills?

A. That I don't remember.

Q. Did you receive any payment of \$17,000 in currency while you were there?

A. No, I did not. [2126]

Mr. Fleming: No further questions.

Mr. Sullivan: May this witness be excused?

The Court: You may be excused, Mr. Hogan.

(Witness excused.)

Mr. Sullivan: Call Mr. Goodfellow, if your Honor please.

RAY GOODFELLOW

was called as a witness on behalf of the defendant, sworn.

The Clerk: Please state your name and occupation to the Court and Jury.

A. I am Ray Goodfellow, accounting officer for the Franchise Tax Board, State Franchise Tax Board.

Direct Examination

By Mr. Sullivan:

Q. How long have you been an employee of the Franchise Tax Board, Mr. Goodfellow?

(Testimony of Ray Goodfellow.)

A. Since 1936.

Q. And what generally, is the function of the Franchise Tax Board in the State of California?

A. To collect, assess and collect taxes.

Q. Does that include personal income taxes?

A. Yes, it does.

Q. Now, have you produced pursuant to subpoena the record of certain tax payments made by Chin Lim Mow and Chin Wong Shee?

A. Yes, I have. [2127]

Q. Residing at 380 Vernon Street, Oakland, California?

A. That is not the address that I have, but I have those accounts.

Q. Yes, and was that the address on the subpoena that was served on you?

A. Yes, I believe it was.

Q. These, as a matter of fact, are the same accounts you produced at the first trial, aren't they?

A. Yes.

Q. Have you identified the accounts as being the accounts of these parties who live at 380 Vernon Street? A. Yes, I have.

Q. Now, what documents have you produced?

A. I brought the 1938 taxpayers ledger for Chin Lim Mow and Chin Wong Shee.

Mr. Sullivan: Now, at this time, if your Honor please, I would like to have marked as Defendant's Exhibit BQ for identification personal income tax individual ledger of the Franchise Tax Board for Chin Lim Mow, and as Defendant's Exhibit for

(Testimony of Ray Goodfellow.)

identification BR the personal income tax individual ledger of the Franchise Tax Commissioner for Chin Wong Shee. And may I, with your Honor's permission, and upon the request of the witness use the photostats which we have made of the official ledger cards which the witness tells me he must return to Sacramento. [2128]

The Court: You may do so. I assume there is no objection, Mr. Fleming?

Mr. Fleming: No objection.

The Clerk: Defendant's Exhibits BQ and BR for identification.

(Thereupon documents identified above were marked U. S. Exhibits Nos. BQ and BR for identification.)

Q. (By Mr. Sullivan): Now, directing your attention to Defendant's Exhibits BQ and BR, are these official records of the State of California?

A. Yes, they are.

Q. And do you identify them as the records of the taxpayers Chin Lim Mow and Chin Wong Shee?

A. Yes.

Q. For the period stated? A. Yes.

Q. Do these records show payments made on account of tax liability of Chin Lim Mow and Chin Wong Shee?

A. Yes.

Q. And they are records kept in the ordinary course of the business of the Franchise Tax Board?

A. Yes, they are.

Mr. Sullivan: Offer them in evidence, if your



(Testimony of Ray Goodfellow.)

Honor please, as Defendant's Exhibits BQ and BR in evidence.

The Court: Be received and marked, accordingly. [2129]

The Clerk: Defendant's Exhibits BQ and BR in evidence.

(Thereupon documents previously marked Defendant's Exhibits BQ and BR for identification were received in evidence.)

Q. (By Mr. Sullivan): Now, referring you to Defendant's Exhibit BQ, which is the ledger card for Chin Lim Mow, do you find on that account any payments made upon the income tax liability of the defendant Chin Lim Mow during the year 1945 to the State of California? A. Yes.

Q. Now, have you at my request—I will strike that.

Have you totaled the payments at all?

A. To some extent.

Q. Well, first of all, point out for me by referring to Defendant's Exhibit BQ, point out for me the dates and amounts of payments in 1945?

A. On February 15, 1945, \$6.21. On that same date, \$95.68. On April 15, 1945, \$1590.80. And on July 5, 1945, \$1955.13. On October 29, 1945, \$1382.70. And on that same date, October 29, 1945, \$117.30.

Q. Now, are you able to state for us from an examination of those and any other records whether any of those payments which you have enumerated

(Testimony of Ray Goodfellow.)

in the year 1945 pertain to the 1944 state income tax of the defendant Chin Lim Mow?

A. No, none that I have given you so far.

Q. None that you have given us so far. Now, do you find that [2130] there is an entry on your ledger account for the 1944 state income tax of Chin Lim Mow?

A. No, there is no entry on the ledger account for the reason that this payment in 1945—the other payment is in payment of what we call a fully paid return, that is, the money is received with the return and we handle that something like a department store handles a cash sale, we don't make any ledger card for it, but there was a—do you want the payment?

Q. Not yet. I want you to tell me then what is the total amount of money paid on account of the income taxes of the defendant during the year 1945 according to your schedule ledger account, which is BQ in evidence. Have you that total?

A. I am not sure I understand, you want the total amounts of payment I have given you plus this other one?

Q. No, the total amount of payments you have given me already.           A. \$5,147.82.

Q. May I have that again?           A. \$5,147.82.

Q. Now, can you tell us by reference to BQ in evidence, taking each payment up separately, what the payment was for?

A. Yes, it was in payment of deficiency arbitrary for 1938, all the payments.

(Testimony of Ray Goodfellow.)

Q. All of those payments? [2131]

A. All of those payments were in payment of that.

Q. Now, have you at my request examined the records of the Franchise Tax Board to ascertain whether any of the \$5,147.82 paid on account of the defendant's liability in 1945 was due to penalty?

A. Yes, I have.

Q. And is it? A. No, sir.

Q. Is it all due to either the principal amount of the tax liability owed to the State of California and interest? A. That's right.

Q. Now, taking up Defendant's Exhibit BR in evidence, which is the ledger card for the taxes of Chin Wong Shee, this is the wife of Chin Lim Mow, can you tell us what your card reflects there with respect to payments in 1945?

A. In 1945? On February 15, 1945, \$95.68. On that same date, \$6.21. On April 15, 1945, \$1376.07, and on July 5, 1945, \$1,053.74. On October 29, 1945, \$1,000. That is all.

Q. And can you tell us the total of those payments made on account of the liability of Chin Wong Shee during the year 1945?

A. That amounted to \$3,531.70.

Q. And have you at my request examined your records to ascertain if any of that total which you have given me was in payment of a penalty assessed against Chin Wong Shee? [2132] A. Yes.

Q. And what is the answer? A. It is not.

Q. Was all that payment of \$3,531.70 on account

(Testimony of Ray Goodfellow.)

of liability for principal amount of the tax and for interest?      A. That's right.

Q. Now, do you have, have you brought with you the 1944 state income tax returns of Chin Wong Shee and Chin Lim Mow?      A. Yes, I have.

Q. And what do they reflect with respect to the amount of tax reported?

A. On April 15, 1945, there were filed, and in each case \$1,078.20 was paid.

Q. What document do you have before you there?

A. I just have a note. I have the returns in my briefcase.

Q. Well, you can refresh your recollection from your notes there, Mr. Goodfellow; it isn't necessary to pull the returns out. Just tell me what is that amount again?      A. \$1,078.20.

Q. And is that the amount of tax reported on the income tax for the State of California for 1944 for Chin Lim Mow?      A. Yes, it is.

Q. And is there a similar amount for Chin Wong Shee?      A. Yes.

Q. That would make—do your records indicate that a [2133] remittance was received with the reported tax?

A. That is the amount of the remittance.

Q. That is the amount of the remittance. That would make then a total payment of \$2,156.40, is that correct?      A. Yes.

Q. Now, is that amount of \$2156.40 which was paid on account of the 1944 state income taxes of

(Testimony of Ray Goodfellow.)

Chin Lim Mow and Chin Wong Shee included in the total amounts of payments which you have given me off of Defendant's Exhibit BQ and BR in evidence?      A. No.

Q. In other words, the totals that you have given me off of BQ and BR in evidence are in addition to this amount of \$2156.40?      A. Yes, it is.

Q. As payments in 1945.

Mr. Sullivan: At this time, if your Honor please, I would like to direct the attention of the Jury to the defendant's tax return, Exhibit 1 in evidence, for 1945, which shows a deduction of the state income tax in the form of \$2,156.40 and an identical figure to the figures read off by Mr. Goodfellow as having been received by the State with the 1944 returns, and also direct the ladies and gentlemen of the Jury's attention to the fact that no exception is taken or appears on this return for either the sum of \$5,147.82 or \$3,531.70 or any part of those figures, the only deduction [2134] being taken is the amount of \$2156.40.

The Court: May I inquire from you the significance of this, Mr. Sullivan?

Mr. Sullivan: Yes, your Honor, the point—

The Court: He is not charged with violating the State income tax laws.

Mr. Sullivan: No. The significance of this is this: that the defendant paid approximately to the State of California \$8,600 in 1945 of state taxes, which were not deducted from his federal income tax return.



(Testimony of Ray Goodfellow.)

The Court: Oh, that is your point?

Mr. Sullivan: Yes, your Honor.

The Court: Very well.

Mr. Sullivan: And as I said in my opening statement we are going to show that there were more deductions omitted from the return than income items omitted.

Q. Now, incidentally, do you find any payments on defendant's Exhibits BQ and BR made on account of income tax liability of the defendant—strike that.

Do you find any payments made on Defendant's Exhibit BQ as having been made in 1943 on the income tax liability of Mr. Chin Lim Mow?

A. Yes.

Q. And what payments do you find there?

A. On that Exhibit you have, the first two; one on July [2135] 22, 1943, of \$1250, and on November 1, 1943, of \$500.

Q. And what is the total payments then made during 1943?

A. On those two?

Q. Yes.

A. I have an additional one that is on the '38 tax that is on that exhibit, there is an additional one, too.

Q. What is the additional one?

A. The additional one is in payment of his 1942 return received in 1943, on April 15, with which he paid \$770.04.

Q. Then in 1943, you first have a payment of \$770.40, and then you have two additional pay-

(Testimony of Ray Goodfellow.)

ments, do you not, from Defendant's Exhibit BQ?

A. That is right.

Q. And how much do the three of those payments total? A. \$2,520.04.

Q. And do you find, referring you to the comparable records for Chin Wong Shee, that is to Defendant's Exhibit BQ, and to any comparable record you may have for her, do you find that payments were made on account of her tax liability to the State of California in 1943?

A. Yes, on the '38 account also a part of the exhibit, there was \$1250 on July 22nd, 1943, and \$500 on November 1, 1943, and on April 15, 1943, with her 1942 income tax return \$770.04.

Q. Now, how much does that make the total of payments in [2136] 1943? A. \$2,520.04.

Q. Now, do any of those totals you have given me for 1943 represent interest on state taxes, or are they all principal amounts of the taxes?

A. Well, of course, there is \$1750 in each case—no, let's see, \$1750 in Chin Lim Mow that ordinarily would be applied against the principal first because it was one of the first payments, first two payments on 1938 account which would indicate nothing charged against interest.

Q. And was anything charged against interest?

A. In either case I would say no.

Q. All right.

Mr. Sullivan: I will direct the ladies and gentlemen's attention, if your Honor please, to Exhibits 5 and 6, being the 1943 return of the defendant and

(Testimony of Ray Goodfellow.)

his wife respectfully and we find no deductions for state income taxes so far as the principal amount of the tax is concerned, the only item appearing on the return is an item interest on taxes, 852, on Exhibit 5.

Mr. Fleming: May it please the Court, I must dispute—

The Court: I didn't hear you, Mr. Fleming.

Mr. Fleming: I said I dispute the information supplied by Mr. Sullivan as what is shown on the Chin Lim Mow return as deduction for taxes, says "Taxes State Inc. \$770.04, and [2137] on the front of Chin Lim Mow's there is deduction for taxes headed "State income" \$770.04.

Mr. Sullivan: Well, with the exception—I am looking at the attachment. With that exception. There is a deduction on the face, but on the attachment the only deduction, if your Honor please, on Exhibit 5, in addition to the one mentioned by counsel, is the sum of \$852 interest on taxes and the similar amount on the attachment to Exhibit 6, which is the return of Chin Wong Shee, and on the face of Chin Wong Shee's return there is a deduction of \$770.04, the figure quite close to the figure read by the witness.

The Court: You accept that explanation?

Mr. Fleming: Yes, your Honor.

Mr. Sullivan: No further questions.

(Testimony of Ray Goodfellow.)

Cross-Examination

By Mr. Fleming:

Q. Mr. Goodfellow, you referred first of all to 1944 tax returns of the defendant Chin Lim Mow and Chin Wong Shee. I believe you said you had those returns with you? A. Yes, I have.

Q. And those were the amounts which you said were \$1750, some such amount?

A. Yes, \$1750—wait a minute.

Mr. Sullivan: Ten seventy-eight.

The Witness: \$1078.20. [2138]

Mr. Sullivan: I wrote it on the board.

Q. (By Mr. Fleming): For all your total tax relating to taxes in what year?

A. 1938, excepting there is—there was 1943 paid in 1944. Also have those returns. All the other tax refers to 1938.

Q. So your testimony then relates to the 1938 taxes of Chin Lim Mow and Chin Wong Shee, is it not? A. Yes.

Q. Now, I will direct your attention and you have produced here personal income tax individual ledger, is that what these documents are?

A. Yes, that is what they are.

Q. Now, I will direct your attention to the—I will ask you when those—what date did these 1938 taxes first appear on your books?

A. June 9, 1943.

Q. Now, I will direct your attention in these

(Testimony of Ray Goodfellow.)

photostats to these dates June 25, 1943, second D, what is that?

A. Second statement and demand.

Q. And the writing after that in pencil, what is that figure?

A. That means sent to the field, that the account was sent to the field for collection on July 10, 1943.

Q. Now, what is the amount of these 1938 state of California [2139] taxes? Tell me those amounts, please?

A. Yes, for Chin Lim Mow, \$6,780.52.

Q. These are figures which first appeared on your books in June, 1943? A. Yes.

Q. And we are dealing here with the State of California income taxes? A. That's right.

Q. Now, what was the Chin Lim Mow tax?

A. \$6,780.52.

Q. That's tax?

A. That is the whole thing.

Q. And what was Chin Wong Shee?

A. \$6,668.11.

Q. \$6,668.11? A. That's right.

Q. You know Mr. F. R. Morgan?

A. Yes, I do.

Q. Who is he?

A. He is now acting chief of the personal income tax division of the Franchise Tax Board.

Mr. Fleming: I will ask there be marked for identification individual income tax return, year 1938, Chin Lim Mow, Government's Exhibit next in order; an individual income tax return, Chin Wong



(Testimony of Ray Goodfellow.)

Shee, Government's Exhibit next in order. [2140]

The Clerk: Plaintiff's Exhibits 348 and 349 for identification.

(Thereupon documents identified above were marked U. S. Exhibits Nos. 348 and 349 for identification.)

Q. (By Mr. Fleming): Now, I will show you these two documents and ask you, 349 being the tax of Chin Wong Shee and 348 Chin Lim Mow, and ask you if you identify that as a certification of your department that those are certified copies of the original 1938 returns, Chin Lim Mow and Chin Wong Shee? A. Yes, I can.

Mr. Fleming: Offer in evidence, if the Court please, as Government's Exhibits 348 and 349.

Mr. Sullivan: If your Honor please, I don't see the purpose of these returns. The matter developed by the witness is as to what taxes were paid during the year 1945 and the other years that I brought out with respect to the manner the defendant and his wife reported those taxes. I don't see how that is relevant, how the return is relevant.

Mr. Fleming: Relates to whether or not they are properly deductible. Mr. Sullivan has given us part of the transaction.

The Court: I am inclined to admit them in evidence, and I will do so.

The Clerk: Government's Exhibits 348 and 349 in evidence. [2141]

(Testimony of Ray Goodfellow.)

(Thereupon documents previously marked U. S. Exhibits Nos. 348 and 349 for identification were received in evidence.)

Q. (By Mr. Fleming): Now, will you tell me the amount of income reported in 1938 and the amount of tax reported in 1938 by Chin Lim Mow and Chin Wong Shee?

A. According to this return?

Q. Yes.

A. This copy? Chin Lim Mow net income \$4,589—

Q. \$4,589— A. Fifty-five cents.

Q. And the amount of tax reported by Chin Lim Mow, 1938? A. \$29.90.

Q. \$29.90. Now, how about Chin Wong Shee?

A. Chin Wong Shee net income \$4,589.59.

Q. Same figure? A. Yes.

Q. The amount of tax reported in that return?

A. \$20.90.

Q. \$20.90?

A. Yes, twenty dollars ninety cents.

Mr. Fleming: At this time I will ask that there be marked as Government's exhibit next in order a document dated November 16, 1942, headed "Notice of additional personal income tax proposed to be assessed, Chin Lim Mow."

The Clerk: Government's Exhibit 350 for identification. [2142]

Mr. Fleming: And as Government's exhibit next in order a document headed "Notice of additional

(Testimony of Ray Goodfellow.)

personal income tax proposed to be assessed, March 12, 1943, Chin Lim Mow.”

The Clerk: Plaintiff’s Exhibit 351 for identification.

Mr. Fleming: As Government’s exhibit next in order, “Notice of additional personal income tax proposed to be assessed, Chin Wong Shee, November 16, 1942.”

The Clerk: 352 for identification.

Mr. Fleming: And finally, “Notice of additional personal income tax proposed to be assessed, March 12, 1943, Chin Wong Shee.”

The Clerk: Plaintiff’s Exhibit 352 for identification.

The Court: How long do you propose to be with this witness?

Mr. Fleming: Probably five minutes, your Honor.

The Court: You have any redirect?

Mr. Sullivan: Maybe one or two questions going to these documents, won’t be of consequence, your Honor.

Q. (By Mr. Fleming): Mr. Goodfellow, I will show you the four exhibits just marked and ask you if you can identify those as copies certified by Mr. Morgan under his hands and notarized by him, records of your office? A. Yes, I can.

Q. And do those purport to be assessments on the dates indicated against Chin Lim Mow and Chin Wong Shee? [2143] A. Yes.

Q. In connection with the year 1938. And are

(Testimony of Ray Goodfellow.)

those in fact the assessments whose figures you have identified on these personal income tax ledgers introduced as defense exhibits?

A. Part of them seems to be this assessment that I——

Q. I will direct your attention to the two dated March 12, 1943. To these two (indicating).

A. What was it you wanted me to identify again, please? There's a couple here I don't seem to have any record of.

Q. Do these relate to the year 1938?

A. These two, yes.

Q. And the same two taxpayers?

A. Yes, but I don't think you meant that. Is that it?

Q. These two (indicating).

A. These two? Yes, those are assessments that appear.

Q. Well, it is the same amounts as the original?

A. Yes.

Mr. Fleming: Offered in evidence as Government's Exhibits 350 to 357.

The Court: They may be received.

The Clerk: Government's Exhibits 350 to 353.

(Thereupon documents identified above were received in evidence, marked U. S. Exhibits Nos. 350, 351, 352 and 353, respectively.)

Q. (By Mr. Fleming): Now, I direct your attention to elicit [2144] a point of time of these two documents, the one dated November 16, 1942, being

(Testimony of Ray Goodfellow.)

Exhibits 350 and 352, and ask you first of all, if you will tell me—read the title of that document?

A. “Notice of additional personal income tax proposed to be assessed.”

Q. And those of November, 1942?

A. November 16, 1942.

Q. Now, what is the amount of the income assessed on that date against Chin Lim Mow?

A. Revised net income?

Q. Yes.

A. Incidentally, I am out of my ken in this. \$5,885.78.

Q. Five thousand—

A. Eight hundred eighty-five and seventy-eight cents.

Q. And for Chin Wong Shee?

A. \$5,885.78.

Q. And what is the tax computed on that basis in November, 1942?

A. Additional tax, you mean?

Q. Yes. A. \$12.96 in each case.

Q. Additional tax twelve dollars and what?

A. Ninety-six cents.

Q. In each case. Now, will you direct your attention to the [2145] other two documents which bear the date March 12, 1943, and tell me, first, what the amount of income assessed against Chin Lim Mow is in that document?

A. You mean the revised net income, is that what you are asking me?

Q. Yes. A. \$80,885.78.



(Testimony of Ray Goodfellow.)

Q. And what is the revised net income for Chin Wong Shee?

A. The same amount, \$80,885.78.

Q. Are those the figures on which the items which you have given me of \$6,780.52 and \$6,668.00 are computed?

A. Yes, they are.

Q. Now, will you read the text of—oh, by the way, will you give me, first of all, to whom these notices are addressed? Give me the address of the one for Chin Lim Mow.

A. "Chin Lim Mow, care of David S. Shew, 823 Grant Avenue, San Francisco."

Q. Now, will you read me the text at the bottom which is typed in?

A. "This arbitrary notice of proposed additional assessment was issued because of impending expiration of the statute of limitations. If information is promptly submitted showing the proposed assessment should be reduced or the notice withdrawn, adjustment may possibly be made without the necessity of a formal protest being filed in accordance [2146] with the last paragraph of this notice."

Q. Now, you say your figures were these figures which were entered upon your ledger some sixty days later on the exhibit which you previously identified?

A. Yes.

Q. Now, do you have any knowledge as to how that income and as to what basis the income for the year 1938, Chin Lim Mow, was increased from roughly under \$10,000 to in excess of \$160,000?

A. No, I am sorry, I don't.

(Testimony of Ray Goodfellow.)

Q. Are you able to indicate, other than from the documents before you, as to whether or not that arbitrary assessment was punitive in nature?

Mr. Sullivan: I object to that, if your Honor please, as calling for a conclusion and opinion of the witness.

The Court: Objection sustained.

Q. (By Mr. Fleming): Do you have any further information with respect to the assessment other than what you have given us in these documents? A. No, I haven't.

Mr. Fleming: If your Honor will pardon me, a minute? I have no further questions.

Mr. Sullivan: No questions, your Honor please, and I move to strike the exhibits introduced by counsel, the individual income tax returns—what are they? Exhibits [2147] 348 through 353, and the testimony pertaining thereto, because it quite clearly appears, if your Honor please, I respectfully submit, that they do not in any way tend to establish what counsel said he was going to establish, a different character of payment.

The witness' testimony is clear in the record that the payment was made during the year 1945, and it was paid on account of the principal amount of tax and on account of interest and no part penalty.

Mr. Fleming: This evidence, if the Court please, is offered as facts available to the Jury as bearing on the question of whether the payment was in the nature of tax or in the nature of penalty.

The Court: The motion will be denied. Ladies

(Testimony of Ray Goodfellow.)

and gentlemen of the Jury, we will adjourn at this time until Monday morning at 9:30. Again you are admonished not to discuss the case among yourselves or with others, and not to form or express an opinion about the matter until such time as it is finally submitted to you.

Monday morning at 9:30.

Mr. Sullivan: May the witness be excused?

The Court: Mr. Goodfellow, you may be excused.

The Witness: Thank you. I think there are some returns of mine there.

Mr. Fleming: I will return the returns to you.

(Thereupon this cause was adjourned to Monday, October 13th, 1952 at the hour of 9:30 a.m.) [2148]

October 13, 1952 at 9:30 A.M.

The Clerk: United States of America vs. Chin Lim Mow, on trial.

Mr. Fleming: Ready, your Honor.

Mr. Sullivan: Ready, your Honor.

The Court: You may proceed.

Mr. Sullivan: Call Mr. Wilkinson.

### MORRIS WILKINSON

was called as a witness on behalf of the Defendant, sworn.

The Clerk: Please state your name and occupation to the Court and Jury?

A. Morris Wilkinson, accountant.

(Testimony of Morris Wilkinson.)

Direct Examination

By Mr. Sullivan:

Q. How long have you been an accountant, Mr. Wilkinson?

A. For approximately ten years.

Q. And are you self-employed or are you employed by a firm?

A. I am employed by Wallace and Meyers.

Q. And is that the firm of which Mr. William Wallace is a partner or member?      A. It is.

Q. How long have you been employed by Wallace and Meyers?

A. About two years and ten months. [2149]

Q. Now, Mr. Wilkinson, are you a certified public accountant?

A. No. However, I have passed the examination for a certified public accountant, but it requires that you have three years experience and I still need a couple of months.

Q. You say it is only a couple of months?

A. Yes.

Q. And according to the prevailing requirement of your profession, you say you have passed the examination for a certified public accountant?

A. I have.

Q. And at the end of those couple of months that you mention will you receive your certificate as a certified public accountant?

A. Yes, upon application to the State Board,

(Testimony of Morris Wilkinson.)

they review your experience and then issue this certificate.

Q. Now, can you tell us something about your professional education and training, and, generally speaking, about your education which might have a bearing upon your profession?

A. Well, I got a BCS degree from—which is a Bachelor of Commercial Science—at Golden Gate College here in San Francisco, and had about a year and a half or two years in accounting there. A BCS is an accounting degree there.

Q. You received your Bachelor of Commercial Science degree from Golden Gate College after the completion of how many years of collegiate [2150] work?

A. It was at least four years of night work.

Q. After that you had some postgraduate work at Golden Gate College?      A. That is right.

Q. Did your courses consist of courses in accountancy?

A. Yes. They covered, oh, I think three years of general accounting and a year in tax accounting and a year in auditing and cost accounting and mathematics of accounting.

Q. Mr. Wilkinson, in preparation for the trial of this case and at the request of Mr. Hubner and myself, have you examined certain books and records of the Gerdon Land Company for the purpose of making an analysis as an accountant?

A. I have.

Q. I will show you Exhibit 56, which is a book



(Testimony of Morris Wilkinson.)

called general ledger of Gerdon Land Company, and Exhibit 56-A, and ask you if you are familiar with those books?

A. Yes, I have reviewed these books.

Q. You have reviewed these books?

A. Yes, sir.

Q. And from your association with the firm of Wallace and Meyers are you familiar with the fact that those books, during the time that you have been employed in the office, have been maintained by those accountants?      A. Yes, I have.

Q. And I will show you, also, Defendant's Exhibits CL through [2151] CP, which are books of, first, the Mandarin Hotel, San Fran Hotel, the Sherman Hotel, the Alpine Hotel and the Bayshore Auto Court, and ask you if in the preparation for this analysis you also examined those books?

A. I reviewed certain parts of these books.

Q. And are those books, similarly, books maintained by the firm of Wallace and Meyers during the time that you have been associated with that firm?      A. They are.

Q. And can you tell us if you considered, besides the books of the Gerdon Land Company and the hotel books which I have indicated to you, did you consider in making your analysis any other records?

A. We had the duplicate copies of the Hogan and Vest statements in our office.

Q. That is, the statements of rentals received?

A. Yes.

(Testimony of Morris Wilkinson.)

Q. And did you examine those?

A. Yes. We also had some remittance advices from Mr. Allen's office, which we reviewed.

Q. Are those, generally speaking, the advices that were received by the firm of Wallace and Meyer as to the deposits made to the account of Gerdon Land Company, the bank account?

A. Yes. They were a sort of a memo form.

Mr. Sullivan: Now, may I have this marked, if your Honor [2152] please, a group of yellow columnar sheets, top of which is entitled "Gerdon Land Company summary 20 account"? May I have that marked defendant's Exhibit BS for identification?

The Court: You may.

The Clerk: Defendant's Exhibit BS marked for identification.

(Thereupon documents identified above were marked Defendant's Exhibit BS for identification only.)

Q. (By Mr. Sullivan): I will show you Defendant's Exhibit BS for identification, Mr. Wilkinson, and ask you if that exhibit and those papers are your work papers which you prepared during the course of the analysis which you described?

A. They are.

Q. And these are, are they not, the same work papers which you produced at the first trial of this case in May?

A. They are.

Q. Have you made any changes in this exhibit?

A. No.

(Testimony of Morris Wilkinson.)

Q. I did obtain the release of the exhibit from the files of the Court and submitted to you for further examination, did I not?      A. Yes.

Q. You did not, however, make any changes in your work papers at all, did you?

A. No. [2153]

Q. Now, can you tell us generally speaking what your working papers consisted of, without going at present into the material that is in them.

A. Well, it was an analysis of an account 20 as Mr. Hubner—in accordance with Mr. Hubner's request to segregate the sources of the entries in that account between Mr. Chin Lim Mow and Admay and all other items in an adjustments column, and also the disbursements from that account.

Q. Then you allocate the material in making your analysis into how many classifications?

A. Three.

Q. And what are those classifications?

A. Chin Lim Mow, Admay and adjustments.

Q. Is the purpose of your analysis to establish or classify the source of the debit and credit entries in account 20?      A. Yes.

Q. Will you please give us the period of time over which your analysis extends?

A. Years 1942 through 1945.

Q. When you say 1942, is that—does that mean your analysis started in January 1, 1942?

A. Yes. I accepted the balance as of January 1st according to your instructions.

Q. In other words, the balance appearing on ac-

(Testimony of Morris Wilkinson.)

count 20 at December 31st, 1941, was accepted without making any classification, [2154] according to the directions which Mr. Hubner and I gave you?

A. That is right.

Q. Will you kindly give me again the columns or classification and headings of your analysis?

A. Well, I have a total column.

Q. Does "Total column" mean a column—well, withdraw that. What does the total column represent?

A. That is the balance in account 20.

Q. And referring you to Exhibit 56, is that the balance which appears, according to the books of the Gerdon Land Company, in account number 20?

A. Yes.

Q. And what are the classifications, again, please, into which you broke down the total column?

A. Chin Lim Mow, Admay and adjustments.

Q. Now, at December 31st, 1941, what do you find for the balance in the total column?

A. \$86,285.36.

Q. And is that the figure which you placed, according to our direction, in the Chin Lim Mow column? A. It is.

Q. Do you then have any breakdown in the columns at that date which are entitled "Admay" and "Adjustments"? A. No. [2155]

A. Now, at December 31st, 1942, what do you have in the total column? A. \$159,578.86.

Q. Now, does that figure represent a book figure on your working analysis?

(Testimony of Morris Wilkinson.)

A. That is the book figure as of that date.

Q. Now, that is a balance figure, is it?

A. Yes, that is the balance in account 20.

Q. Is it a credit balance or a debit balance?

A. It is a credit balance.

Q. Is the \$86,285.36, is that a credit figure in both instances in which I have written it up here?

A. It is.

Q. When you say that in each of those three instances that I have on the board, that those figures represent a credit balance, does that mean that the corporation owed somebody money or was owed money by someone?

A. It means the corporation owed someone money.

Q. All right. Now, will you give me the figure in your total column at December 31, 1943?

A. \$143,664.63.

Q. Is that also a credit balance?

A. It is.

Q. And at December 31, 1944?

A. \$235,606.75. [2156]

Q. Is that a credit balance?           A. It is.

Q. And at December 31st, 1945?

A. \$306,568.83.

Q. And is that also a credit balance?

A. It is.

Q. Now, all of the figures which you have given me and which I have listed on the blackboard here under the word "Total," do those represent the figures at those dates which are credit balances in



(Testimony of Morris Wilkinson.)

account 20 as you have taken them off the books of the corporation, which are Exhibit 56 in evidence?

A. They do.

Q. Now, what do you have in your column for Chin Lim Mow at December 31, 1942?

A. \$195,582.15.

Q. And is that a credit balance? A. It is.

Q. And at that date what do you have in the column entitled "Admay"?

A. \$9,857.19. That is a debit balance.

Q. And when you say that that figure is a debit balance, does that mean that it represents what the corporation owed or what was owed to the corporation? A. What was owed to the corporation.

Q. Would it be correct for me to indicate that debit figure [2157] on the blackboard here, for the purposes of illustration, by putting it in parentheses? A. Yes.

Q. Now, what have you in the "Adjustments" column at December 31, 1942?

A. \$26,146.10. That is a debit balance.

Q. Now, what, for the purposes of your adjustments column, do you mean when you say the word "adjustments" in the analysis?

A. Well, if I remember, there were several items that didn't apply to either one of these segregations, and there were other items that actually applied to different years than the year 1942 in this case.

Q. Well, is it your testimony, then, that you put in the "Adjustments" column those items which you

(Testimony of Morris Wilkinson.)

did not classify either under "Chin Lim Mow" or "Admay"?

A. No, some of those items are classified under "Chin Lim Mow" or "Admay" in other years.

Q. In other years? Well, is the purpose of your adjustments column then, to make corrections as to the time of the entry? A. Yes.

Q. Now, what do you have in the "Chin Lim Mow" column at December 31, 1943?

A. \$197,805.16.

Q. Is that a credit balance? [2158]

A. Yes.

Q. And in the Admay column?

A. \$1,469.20.

Q. Is that a credit balance? A. Yes.

Q. And in the adjustments column?

A. \$55,609.73.

Q. Is that a credit? A. Debit.

Q. That is a debit? At December 31, 1944, what do you have in the Chin Lim Mow classification?

A. \$213,186.32.

Q. Is that a credit balance? A. Yes.

Q. And in the Admay column?

A. \$39,519.01.

Q. Is that a credit balance? A. Yes.

Q. And in the adjustments column?

A. \$17,098.68. That is a debit balance.

Q. Will you kindly give us the comparable figure at December 31, 1945, according to your analysis?

A. Chin Lim Mow, I have \$248,547.70.

Q. What do you have for Admay?

(Testimony of Morris Wilkinson.)

A. \$74,178.31. [2159]

Q. What do you have for adjustments?

A. \$16,157.18. That is a debit.

Q. Now, directing your attention to the figure that you have given me at December 31, 1942, do the three figures which you have given us in the column "Chin Lim Mow," "Admay," and "Adjustments" represent, according to your analysis, a breakdown of the sources of the entries, whether debit or credit, in account 20? A. Yes.

Q. And that represents the balance in each of the classifications, does it not, that you have selected? A. Yes.

Q. Is it your testimony with respect to the figures that you have given us at December 31st, 1943, December 31st, 1944, and December 31st, 1945, that the several balances which you have given us under the columns "Chin Lim Mow," "Admay" and "Adjustments" represent a breakdown, according to your analysis, of the figures appearing on the book which you have given us here under the column "Total"? A. Yes.

Q. And these are the balances, are they, of the debit and credit entries in those classifications?

A. Yes.

Q. Now, Mr. Wilkinson, have you calculated the increase in the account 20 balance between December 31, 1941, and December [2160] 31st, 1942, as it appears on the books of the corporation?

A. Yes.

Q. And what is that figure?

(Testimony of Morris Wilkinson.)

A. \$73,293.50.

Q. Do those figures which you have just given me represent an increase in the balance, credit balance, as it appeared at December 31, 1941, and at December 31st, 1942? A. Yes.

Q. Have you a similar figure that represents the increase in this account according to the books of the corporation, in the account itself, calculations from those books, between December 31, 1942, and December 31, 1943?

A. There was a decrease that year.

Q. There was a decrease? What was the figure?

A. \$15,914.23.

Q. Now, would it be correct for me to represent that as a figure in parentheses? A. Yes.

Q. Have you a comparable figure that represents the increase in the account 20, according to the books, between the end of the year 1943 and the end of the year 1944? A. Yes. \$91,942.12.

Q. Is that an increase? A. Yes.

Q. And have you a comparable figure representing the increase [2161] between December 31st, 1944, and December 31st, 1945?

A. \$70,962.08.

Q. Have you similarly calculated the increase or decrease in the balances of the account which you have given us, according to your analysis, and as you have classified those analyses, "Chin Lim Mow," "Admay," and "Adjustments"?

A. Yes.

Q. Now, what do you have as the increase dur-

(Testimony of Morris Wilkinson.)

ing the year 1941 in the column "Chin Lim Mow"?

A. You mean 1942?

Q. I mean 1942. Between December 31st, 1941 and December 31st, 1942? A. \$109,296.79.

Q. Do you have any figures for Admay or Adjustments comparable to that figure?

A. Yes. \$9,857.19, in Admay, and \$26,146.10 in Adjustments. Those are debit figures.

Q. Both of those are debit figures? Will you give me the comparable figure for the three classifications of your analysis between December 31, 1942 and December 31st, 1943?

A. In "Chin Lim Mow," \$2,223.01; "Admay" \$4,326.39.

Q. Is that a positive figure?

A. Yes. "Adjustments" column \$29,463.63. That is a debit figure. [2162]

Q. Now, will you give me a comparable figure representing the increase or decrease between December 31, 1943 and December 31, 1944, for each of the three classifications of your analysis, namely, Chin Lim Mow, Admay and Adjustments?

A. \$15,381.16; \$38,049.81; \$38,511.15.

Q. Is that last a negative figure or a positive figure? A. That is a positive figure.

Q. And finally, will you give me the comparable figures for these three classifications representing the increase or decrease between December 31, 1944, and December 31, 1945?

A. \$35,361.38; \$34,659.30; \$941.40



(Testimony of Morris Wilkinson.)

Q. Is that last figure of \$941.40 a positive figure?

A. It is a credit balance.

Q. It is a credit. All right, now, Mr. Wilkinson, directing your attention to the period of time between December 31, 1944, and December 31, 1945, what did you find to be the increase in accounts number 20 according to the books during that period of time? A. \$70,962.08.

Q. And what portion of that figure or what did you find to be the increase for Chin Lim Mow according to your analysis during that time?

A. \$35,361.38.

Q. And what did you find to be the increase for Adamy during that time? [2163]

A. \$34,659.30.

Q. And then you have adjustments of \$941.40, is that right? A. Yes.

Q. Is it correct to say, then, that while, according to the books which you have there, accounts payable number 20 shows an increase during the year 1945 of \$70,962.08, according to your analysis that portion of the entries whose sources you have allocated to Chin Lim Mow went up only \$35,361.38, is that correct? A. Yes.

Q. And similarly, Admay went up only \$34,659.30, is that correct? A. Yes.

Q. Mr. Wilkinson, I will direct your attention to accounts payable number 20 and to an entry of December 31, 1945, in the sum of \$6,647.39. Will you kindly find that?—strike that.

Do you find an entry at December 31, 1945, a credit entry of \$8,227.99? A. Yes.

(Testimony of Morris Wilkinson.)

Q. Now, is there a cross reference there to the journal?      A. Yes.

Q. Can you tell us what that entry represents according to the books by reference to the journal?

There is a reference to the journal there, isn't there?

A. Yes, although the page isn't [2164] mentioned.

Q. Do you find a reference also to the cash book?

A. Yes.

Q. Well, will you see if you can locate that entry for us in the cash book?      A. I do.

Q. And what does the entry as you find it in the cash book——

A. Well, the total of the December, 1945, cash receipts credited to account 20 is \$8,227.99.

Q. Where is that, please point it out to me.

A. Right down here (indicating).

Q. Do you find a breakdown of that?

A. That's composed of an entry here on December 4, Chin Hing, \$6,647.39, and one——

Q. That is the entry I want. The entry of \$6,647.39, is that it?      A. \$6,647.39.

Q. All right. Is that, according to the cash book, an entry under the name of Chin Hing?

A. It is.

Q. And how does it appear then when it is carried over to account 20, as a credit?      A. Yes.

Q. In other words, it is part of the credit entry of some \$8,200 that you have read to me?

(Testimony of Morris Wilkinson.)

A. Yes. [2165]

Q. And that is a part of the credit entry. Will you read it to us again, at December 31, of what amount? A. \$8,227.99.

Q. What is the description of that entry in account number 20?

A. In account number 20, just got "B.H.C."

Q. And I will show you a part of Exhibit 107 which is in evidence here. Do you recognize that as one of the remittance notices that you examined in connection with your analysis?

A. These are the—I don't remember this particular one, but these are the remittance advices that we had.

Q. The advices from Mr. Allen, the attorney?

A. Yes.

Q. And do you find on there the amount of \$6,-647.39 that you have just pointed out to us in the cash book? A. I do.

Q. And what is the description on that remittance advice? A. Chin Hing for taxes.

Q. Now, do you recall what disposition you made of this entry of \$8,200 that you have just pointed out to us, which includes the amount of \$6,647.39, Chin Hing for taxes; do you recall what disposition you made of that when you made your analysis?

A. I charged it to Chin Lim Mow.

Q. All right, so that you have included that in this increase figure of \$35,361.39, is that correct?

A. I have. [2166]

Q. If it should be found from the evidence in

(Testimony of Morris Wilkinson.)

this case that this was not a payment which originated with Chin Lim Mow, but it was a payment that originated with Admay, what disposition would you make of that item of \$6,647.39, according to your analysis?

A. Well, if it was Admay rather than Chin Lim Mow's check, it should have gone into Admay rather than Chin Lim Mow. It would increase Admay.

Q. If that were so, would this increase the Admay amount of \$34,659.30?           A. It would.

Q. By the amount of \$6,647.39?           A. Yes.

Q. And at the same time would it decrease the figure representing the increase in the Chin Lim Mow column, which is \$35,361.38?

A. It would decrease that amount.

The Court: Speak a little louder, please.

The Witness: It would decrease that increase for that year for Chin Lim Mow.

Q. (By Mr. Sullivan): By how much?

A. By that, the amount of \$6,647.39.

Mr. Sullivan: No further questions.

### Cross-Examination

By Mr. Fleming:

Q. Are these the papers from which you [2167] made these calculations, Mr. Wilkinson?

A. Yes.

Q. Well, now, is it correct to say this, Mr. Wilkinson, is what you have done is you have taken account 20 and you have divided it two ways, and

(Testimony of Morris Wilkinson.)

part of it you put under the column Chin Lim Mow and part you put under column Admay?

A. That's correct, and then those items that didn't affect it in those years I put under Adjustment.

Q. Did you examine the cancelled checks of the Admay Company?

A. I examined cancelled checks, I believe, for the year 1944 only. We did not have 1945, and I don't believe there were any checks prior to '44 for Admay, to the best of my knowledge.

Q. You say you did not examine the 1945 Admay checks?

A. Well, I saw some of them, but they weren't in our office.

Q. Did you see a check for \$20,000 in December, 1945? Are you able to tell me to whom that check was payable, December 29?

A. Can I see my work sheets a minute? You said in December of '45?

Q. '45.

A. I don't believe I did. I don't have any notation for it here.

Q. Did you examine a check for \$6,000 on December 31, 1945, of Admay? [2168]

A. I don't believe so.

Q. By the way, do you have any personal knowledge of any of these '44-1945 payments?

A. What do you mean by that?

Q. Did you have anything to do with the books in '44-1945?

A. No.



(Testimony of Morris Wilkinson.)

Q. And is your testimony limited to an examination of account 20 in the books? A. It is.

Q. Did you examine the cancelled checks of Gerdon Land Company?

A. I examined some of them.

Q. Did you examine the checks for 1946?

A. No.

Q. Did you make any analysis in 1946 of this account 20? A. No.

Q. Did you make any analysis in '47 for this account 20? A. No.

Q. Now, in this column "Adjustments," would it be necessary, in order to complete your examination to make an examination in '46 to see whether or not there were any adjustments which should apply to the tabulation which you have made?

A. It could change some of the items?

Q. And similarly, with respect to 1947, could that change some items? [2169]

A. It is possible.

Q. Did you discover any payments made by Gerdon Land Company out of account 20 going to any of the individuals listed as partners in the Admay Company? A. I don't believe so.

Q. You know who those individuals are, don't you, Janet Chan, Bertha Chan, and the others that are listed? A. Yes.

Q. You discover any payments in the year 1946 according to any of those individuals?

A. I didn't examine '46.

(Testimony of Morris Wilkinson.)

Q. Now, did you examine the minutes of the Gerdon Land Company?

A. I have examined some of them.

Q. Did you examine all of them?

A. I don't believe so, I don't think that we had a complete set in our office.

Q. Well, is it your testimony essentially that you looked at the entries in the books and when the books said "Admay" you put it over in this column, is that what you did?

A. No, in some cases the books, I believe, didn't say "Admay," I traced them to the tax return on which the income is reported.

Q. You base this analysis on the Admay tax return?      A. Partly.

Q. You accepted Admay 1945 tax return as correct, did you? [2170]      A. I believe so.

Q. That is, the Admay partnership return, '45 partnership return of income, is that the return which you accepted as correct?

A. I didn't necessarily take these figures as being correct, but the items *of reported*, as Admay income, on this return, that were reflected in 20 account I placed under that category on this analysis.

Q. Now, you were still—are you the gentleman in Mr. Wallace's office who actually keeps the Gerdon books now?      A. What is that again?

Mr. Fleming: Will you read the question?

(Question read by the Reporter.)

(Testimony of Morris Wilkinson.)

A. No.

Q. (By Mr. Fleming): How about these hotel books, you have anything to do with those, the Mandarin Theatre and others?

A. Well, during the period that Mr. Peffers has been sick I have done some of the work on them.

Q. And have you been employed to do that by Mr. Wallace?      A. I have.

Q. Did you in your analysis go beyond the books, account 20, the other data you have described?

A. Only to examine those other documents we had in the office that pertained to the books.

Q. Did you for example, find a \$9,000 Hogan and Vest note [2171] on the Gerdon Land Company books?

A. I don't believe so, not in connection with the analysis of account 20.

Mr. Fleming: I have no further questions.

The Court: Any redirect, Mr. Sullivan?

Mr. Sullivan: No, your Honor. May the witness be excused?

The Court: You may be excused, Mr. Wilkinson.

(Witness excused.)

Mr. Sullivan: Call Mr. Andrews, your Honor.

The Court: Mr. Andrews.

**FRANK T. ANDREWS**

was called as a witness on behalf of the defendant, sworn.

The Clerk: Please state your name and occupation to the court and jury.

(Testimony of Frank T. Andrews.)

A. My name is Frank T. Andrews. My occupation is certified public accountant. My residence, 261 Morningside Drive, San Francisco.

### Direct Examination

By Mr. Sullivan:

Q. Mr. Andrews, how long have you been a certified public accountant?      A. About 27 years.

Q. And are you licensed as a certified public accountant by the State of California? [2172]

A. Yes, sir.

Q. Can you tell us briefly something about your professional education, your education generally as it bears upon your training for your profession?

A. My commercial education started when I attended the High School of Commerce here in San Francisco. After that I attended St. Ignatius University where I took academic courses. After that I attended the School of Economics of the University of London, England. On my return I attended the Brown School of Accounting, took accounting courses. I took a course with LaSalle Extension University in higher accountancy. I also took courses with the University of California Extension and the Golden Gate College.

Q. Now, have you at any time been a member of any professional societies or associations?

A. I'm a member of the American Institute of Accountants, and also the California State Society of Certified Public Accountants.

(Testimony of Frank T. Andrews.)

Q. Have you had experience with the Bureau of Internal Revenue?

A. I was employed by the Bureau of Internal Revenue from some time in 1922 until about the end of 1925 as an Internal Revenue Agent.

Q. And in the course of your duties as an Internal Revenue Agent did you have for your attention various matters having [2173] to do with the determination of tax liability? A. I did.

Q. Did you, in the course of your duties familiarize yourself with and apply an accountancy technique, a formula known as the net worth method? A. Yes, sir.

Q. Now, I assume that after you left the Bureau of Internal Revenue you started into private practice, did you? A. Yes, I did.

Q. I don't believe I asked you the present name of your firm; what is it?

A. F. T. Andrews and Company.

Q. Is it located in San Francisco?

A. Yes.

Q. And you have in addition to yourself considerable staff, do you? A. Yes, sir.

Q. Now, how long have you been practicing your profession as F. T. Andrews and Company?

A. Since early in 1926.

Q. And continuously since that time?

A. Continuously.

Q. Do you, in connection with your professional practice, specialize in any particular type of accountancy work?



(Testimony of Frank T. Andrews.)

A. No, our firm handles all types of accountancy and we [2174] also prepare income tax returns, and I usually handle the tax matters, because I'm admitted to practice as an agent before the Treasury Department and I'm also admitted to practice before the Tax Court of the United States.

Q. The Tax Court, incidentally, is a new name for the old Board of Tax Appeals, isn't it?

A. Yes, it is.

Q. And were you also admitted before the old Board of Tax Appeals?           A. Yes, sir.

Q. Now, Mr. Andrews, when did you first have anything to do with this case; can you give us that date approximately?           A. Last May some time.

Q. And before, let us say, the beginning of May, 1952, were you associated with this litigation in any way?           A. No, sir.

Q. Had you ever done any accountancy work for Mr. Chin Lim Mow before May of 1952?

A. No, sir.

Q. Or for any member of his family?

A. No.

Q. Had you anything to do directly or indirectly with Mr. Chin Lim Mow's tax problems or tax matters before May of 1952?           A. No. [2175]

Q. You have been in constant attendance at the trial of this case, have you not, before His Honor Judge Murphy?           A. Yes, I have.

Q. You have listened to all the evidence, have you?

(Testimony of Frank T. Andrews.)

A. I have listened to all the testimony and I have read the reporters' transcript. [2176]

Q. Have you examined in instances the exhibits which are in evidence here? A. I have.

Q. And have you at my request prepared certain documents and analyses based upon the evidence in the case? A. Yes.

Mr. Sullivan: Your Honor please, at this time may I have marked for identification document entitled "Chin Lim Mow," and in the upper right hand corner appears "Schedule 1." The title is "Statements of net worth December 31, 1944, and December 31st, 1945."

The Court: Let it be marked.

The Clerk: Defendant's Exhibit DD for identification.

(Whereupon document referred to above was marked Defendant's Exhibit DD for identification.)

Mr. Sullivan: And may I have marked as defendant's exhibit for identification next in order a three-page document entitled "Chin Lim Mow, details to statement of net worth December 31, 1944, and December 31st, 1945;" in the upper right hand corner of which appears "Schedule 2," and upon which there appear various schedules of details as follows: "Item A, bank account; Item B, personal cash on hand; Item C, miscellaneous accounts and claims receivable; Item D, deposits; Item E, securi-

(Testimony of Frank T. Andrews.)

ties; Item F, real estate; Item G, Admay Company; Item H, Wai Yuen Club." [2177]

The Court: Let it be marked.

The Clerk: Defendant's Exhibit DE for identification.

(Whereupon document referred to above was marked Defendant's Exhibit DE for identification.)

Mr. Sullivan: I have copies of these, your Honor please, which I will at this time give to counsel for the defense. And I have copies for your Honor. Does your Honor wish the original?

The Court: No, I will take the copy.

Q. (By Mr. Sullivan): Now, I will direct your attention, Mr. Andrews, to exhibits DD and DE. Do you have photostatic reproductions of these?

A. Yes, I do.

Q. Did you prepare these documents on the evidence which has been presented in this case?

A. Yes, sir.

Q. And did you make, in the course of the preparation, the various entries which are contained in those documents? A. I did.

Q. When you incorporated the various material into the documents did you, to the best of your ability, take that from the evidence both orally produced in court, in other words, the testimony of the witnesses, and produced in written form through the introduction of exhibits? A. Yes, sir.

(Testimony of Frank T. Andrews.)

Q. And after that did you make certain calculations, additions [2178] and subtractions?

A. Yes, I did.

Q. And did you arrive, then, at certain totals?

A. Yes.

Mr. Sullivan: Offer these documents in evidence, if your Honor please.

The Clerk: Defendant's Exhibits DD and DE in evidence.

(Whereupon Defendant's Exhibits DD and DE previously marked for identification, were received in evidence.)

Mr. Sullivan: May I at this time, if your Honor please, ask your Honor's permisison to pass photostatic reproductions of Defendant's Exhibits DD and DE among the ladies and gentlemen of the jury?

The Court: You may.

(Whereupon documents were distributed to the jury.)

Mr. Sullivan: May I wait, your Honor, until the ladies and gentlemen have their copies?

Q. Now, Mr. Andrews, directing your attention to the document which is DD in evidence, tell us please, first, generally what that document is, without going into the details of the analysis.

A. I was instructed to include in this statement the assets of Mr. Chin Lim Mow and his wife as developed from the testimony and evidence brought out in this trial.

(Testimony of Frank T. Andrews.)

Q. And to include those assets to what specific dates? [2179]

A. At December 31, 1944, and December 31st, 1945.

Q. Now, do you have certain calculations on that exhibit DD which relates to the net worth of Mr. Chin Lim Mow and his wife at those dates?

A. Yes, I do.

Q. And do you also on the same sheet make a comparison of the net worth increase as you have calculated it with anything?

A. I have made a comparison between the adjusted increase in net worth and the net income that was reported on the income tax returns of Mr. Chin Lim Mow and his wife.

Q. Now, tell us generally, before we go into detail, what exhibit DE represents, Mr. Andrews?

A. I thought it would be clearer if the balance sheet were more—the statements of net worth were more condensed, and I have therefore placed on Exhibit DD in certain instances summarized figures, and the details I have placed in exhibit DE as a matter of convenience.

Q. Now, I believe you told us that you are a certified public accountant, have you not?

A. Yes, sir.

Q. And these statements which you have identified here, and which are exhibits DD and DE, certified statements?

A. They are what we call and must call un-audited statements.



(Testimony of Frank T. Andrews.)

Q. And can you explain that for us, and can you explain why they are not designated "certified statements"? [2180]

A. Because I have not had the opportunity to interrogate the witness in this trial myself. Neither have I had an opportunity to audit and investigate the documentary evidence produced during this trial. Therefore, I have no information on these figures except what I have heard here in court and what I have seen in the way of evidence. Therefore, I could not say that the figures are correct insofar as certifying to them is concerned.

Q. Frequently we see in the newspaper, Mr. Andrews, a statement published by a banking house or corporation in which there is a certificate of a certified public accountant or a firm of certified public accountants attached to it. Isn't that frequently done?

A. Yes, that is done quite frequently. However, in those cases the accountants have verified all the items in the net worth statement and substantiated them from, sometimes from outside sources, to the extent that they can say that the figures they have used are accurate and correct as to the sources of the figures and inclusion of those figures in the net worth statement.

Q. Well, what I am getting at here is that these documents which you have prepared are not prepared by you in any way as having your certificate as a certified public accountant, are they?

A. They are not. [2181]

(Testimony of Frank T. Andrews.)

Q. Now, directing your attention to the first exhibit, which is exhibit DD in evidence, do you have there at the first one-half or two-thirds of the document a division between certain calculations of entries?

A. Yes. The first division is "Assets" and the second division is "Liabilities and net worth."

Q. In other words, the subtraction of the total of the second division from the total of the first division, or the liabilities from the assets, gives you the calculation of net worth, does it not?

A. The subtraction of the total "Liabilities" in the second division from the total "Assets" in the first division results in the figures of net worth.

Q. Now, directing your attention to the first entry under "Assets," will you give us that, please?

A. The first entry is "Bank accounts."

Q. And what do you have at 1945—at 1944, at December 31st, as the total amount for that entry?

A. Under this classification I have at the end of 1944, \$107,352.06; and at the end of 1945, \$54,162.98.

Q. I notice that you have a reference at that entry to a schedule 2A. Is that the first schedule that appears on exhibit DE?      A. Yes.

Q. May I direct your attention to schedule item A on exhibit [2182] DE? Will you kindly read that, the details of the title of that schedule?

A. "Item A, bank accounts."

Q. Generally speaking, have you classified these various bank accounts under certain division?

(Testimony of Frank T. Andrews.)

A. I did it as a matter of convenience. I thought it would be more readily understood.

Q. And what did you do?

A. Well, I grouped accounts with certain bank accounts under the heading of each bank. Although the branches may be different, I thought it would be more convenient to read in this form.

Q. So that the first four entries that you have are the details of the bank accounts, pertain to the accounts of the American Trust Company, is that your testimony?      A. Yes.

Q. And the next of those items are accounts with the Bank of America?      A. Yes.

Q. And so on down the line.

A. That is right?

Q. Now, will you explain to us what you have done in order to arrive at the totals for those bank accounts which appear at the bottom of exhibit A?

A. Well, I was instructed to calculate the net worth [2183] statement for Chin Lim Mow and his wife. I found, however, that among the bank accounts were accounts in the name of his wife and some of his children. In those cases I could not put down a figure as a matter of accountancy because I had nothing to guide me; therefore, I asked your direction and you instructed me in the case of the account of Chin Wah Nor and Wong Ying that I should use one-half of the account balance in this statement.

Likewise, in the account of Wong Ying and

(Testimony of Frank T. Andrews.)

Bertha Chan that I found, I took one-half. In the case of—in the instance of the account of Wong Ying and May Chew Chan and Janet Chan, I was directed to use one-third. And in the case of Wong Toy and Wong Ying I was directed to use one-half.

Q. Going back to the first account with the American Trust Company, did you in picking up the half of the balance intend that that half represent the half of Wong Ying, Mr. Chan's wife?

A. Yes. That was the purpose.

Q. And in the first account with the Bank of America that you picked up half again, as representing the interest of Mrs. Chan, who was Wong Ying?

A. Yes.

Q. Similarly with the Farmers and Merchants Savings Bank, you picked up at my instructions one-third of the balance since Wong Ying is one of three names on the account, is that [2184] correct?

A. That is correct.

Q. Now, did you at any time take a different balance in making your calculations than what was stipulated and agreed to here between myself, on behalf of the defendant, and Mr. Fleming on behalf of the government?

A. No.

Q. And in these other instances where no division of the account is made on item A, did you take the full amount of the balance that was agreed to and stipulated to between the defense and the government?

A. Yes.

Q. For example, where we have the account of B. H. Chan and Wong Ying in the Bank of Canton,

(Testimony of Frank T. Andrews.)

what do you have at 1944 and at 1945 for that account?

A. December 31, 1944, \$39.47. Same amount at the end of 1945.

Q. And that was an account in the name of husband and wife, was it not? A. Yes.

Q. So you included the full balance of that account, is that correct? A. That is correct.

Q. You arrived at certain totals on exhibit A, Mr. Andrews, which is the first schedule on exhibit DE, and will you kindly give us the total amount of assets represented by bank accounts [2185] at December 31, 1944, and December 31, 1945?

A. The total for bank accounts at the end of 1944, \$107,352.06; and at the end of 1945, \$54,162.98.

Q. Did you then carry those totals over to your exhibit DD as the first entry of that exhibit?

A. That is correct.

Q. Now, Mr. Andrews, there has been some testimony in this case about a balance of \$17,500 which appears from documentary evidence in this case to be the balance at December 31, 1945, in a trustee account maintained by Howard Chang and Evelyn Lee Chang, his wife, in the Pacific National Bank at San Francisco. There was also testimony to the effect that, by the government, that that balance was included in the detail of bank accounts. Did you in preparing item A or in making your first entry of bank accounts include that \$17,500?

A. I did not.



(Testimony of Frank T. Andrews.)

Q. Now, referring you to exhibit DD, which is the net worth statement, will you please give us the second entry that you have there?

A. The second entry is "Personal cash on hand, December 31, 1944, \$58,396.85; December 31st, 1945, none."

Q. Now, do you have a reference to a schedule which is the supporting details for this entry?

A. I do.

Q. And what is that? [2186]

A. On schedule 2, Item B.

Q. That is the second schedule on the second sheet of document which is exhibit DE, is it not?

A. Yes.

Q. And will you kindly read me the descriptive heading of item B?

A. "Personal cash on hand, December 31, 1944, representing only that portion of defendant's cash on hand identified during the course of the trial."

Q. Now, can you explain to us what you have done in developing the details of this schedule, which is item B?      A. Yes.

Q. Read us the first item, please.

A. The first item, dated January 4, 1945, "Currency delivered to Alameda East Bay Title Insurance Company in the amount of \$13,346.85."

Q. I notice you have a reference for that.

A. Yes. Mr. Corbett's testimony on page 292 of the transcript.

Q. Can you tell us, generally, what was the sub-

(Testimony of Frank T. Andrews.)

stance of that testimony upon which you made that entry and calculation?

A. It was testified that currency was deposited by Mr. Chan on that date with the Alameda East Bay Title Insurance Company.

Q. Was this the amount of currency that had to do with the purchase of premises at 1555 Oak Street, do you recall?      A. I believe it was. [2187]

Q. What is the next entry?

A. January 10, 1945, currency to Norman Ogilvie on the Hobart and Telegraph purchase in the amount of \$5,300, in accordance with Mr. Ogilvie's testimony on page 700 of the transcript."

Q. And the next entry?

A. Dated "January 13, 1945. Currency to W. A. Wallace for taxes, \$12,600, as testified to by Mr. Wallace and shown on page 1,169 of the transcript."

Q. Was that the incident described in the testimony where Mr. Chan, being confined to his home, gave Mr. Wallace \$12,600 with which he purchased a cashier's check to pay certain income taxes of the children?      A. It is.

Q. And the next item?

A. Next item is headed "January 15, 1945. Currency in John J. Allen, Jr., Trustee, \$1,150, as testified to by Mr. Allen and shown on page 624."

Q. And the next item?

A. Next item, dated January 24, 1945, "Currency with Norman Ogilvie on purchase of 23rd and Broadway, \$25,000, according to his testimony shown on page 704 of transcript."

(Testimony of Frank T. Andrews.)

Q. Now, what did you calculate on item B for the total of the various amounts of currency appearing in the testimony at various dates you have indicated? [2188]           A. \$58,396.85.

Q. Did you then treat that as personal currency or cash on hand at December 31, 1944?

A. I did.

Q. And did you then carry the total from exhibit DE, item B, over to exhibit DD, which is the first single paper for your net worth statement for the defendant?           A. Yes.

Q. You say that with respect to the personal cash on hand, you found no testimony of the existence of any in the record, is that correct?

A. At December 31st, 1945?

Q. Yes.           A. Yes.

Q. Now, what is the next item that you have?

A. "Gerdon Land Company Account."

Q. Now, when you say "Gerdon Land Company Account," what do you mean?

A. I am speaking of the account No. 20 on the books of Gerdon Land Company.

Q. Now, have you in making this entry treated the account on the unsegregated basis as it appears on the books, or have you treated it upon a segregated basis or a basis which has been analyzed?

A. I have segregated the account into the amount due Chin [2189] Lim Mow and into the amount owing to Admay Company.

Q. What do the two figures that you have opposite "Gerdon Land Company" as the third entry there, do they represent the amount to Chin Lim

(Testimony of Frank T. Andrews.)

Mow alone or do they represent an amount due Chin Lim Mow and others?

A. I was directed to make this a statement for Chin Lim Mow. Therefore, those figures represent the amount due Chin Lim Mow.

Q. And what figures do you have in the two dates you have taken for your balance sheet?

A. At December 31st, 1944, \$208,623.42; December 31, 1945, \$238,278.81.

Q. Now, I notice that you have a reference there to an exhibit. A. Exhibit BS.

Q. And what is that exhibit?

A. That was the exhibit by Mr. Wilkinson.

The Court: We will take a recess at this time.

Mr. Sullivan: Yes, your Honor.

The Court: Take a recess for a few minutes, ladies and gentlemen.

(Short recess.) [2190]

Q. Mr. Andrews, before we take up this third entry which is the entry relating to the Gerdon Land Company, account 20, there is one question I forgot to ask you in connection with your analysis of the personal cash on hand in item B. Did you include in that entry of personal cash on hand at December 31, 1945, the \$70,000 of which there was testimony in this case that was deposited into the bank account of Howard Chang and Evelyn Lee Chang by Evelyn Lee Chang or an unknown person on January 3rd or 4th, 1946? A. No.

Q. Now, referring you again to the Gerdon Land

(Testimony of Frank T. Andrews.)

Company account, will you tell us, how you arrived at the totals which you have indicated there as the defendant's interest in that account at December 31, 1944, and December 31, 1945?

A. At December 31, 1944, I took the balance shown by Mr. Wilkinson in his analysis of his total of account 20, \$235,606.75, and I added to that two corrections that were made by the Government, one correction of \$12,536.68 in regard to alterations made at 8th and Webster Street where the entry was not made on the Gerdon books until 1946.

I also made a correction that was made by the Government in the amount of \$10,500 in regard to the Mandarin Theater. After those two adjustments are added to the figure that Mr. Wilkinson showed in his analysis, the total Gerdon account 20 which I have corresponds to that shown by the [2191] Government at that point.

Then I subtracted from that figure the amount which is allocated to the Admay Company and I carried that under a different item in my net worth statement. Those two same adjustments that were made on the basis of the Government's corrections for the end of 1944 I also made as of the end of 1945.

Q. Now, in the course of arriving at your totals for the Gerdon Land Company account which you have indicated here, did you take into account a check charged to that account under the name of Chin Hing in the amount of \$6,647.39?



(Testimony of Frank T. Andrews.)

A. Yes, I omitted to say that. At the end of 1945 I also corrected the balance on the basis of Mr. Wallace's testimony and also on the basis of Mr. Wilkinson's testimony for the amount of \$6,649, and I believe it was thirty-nine cents, which was erroneously shown in account 20 as having come from Mr. Chan, whereas it came from the account of Admay.

Q. Now, what is the next item that you have on Exhibit DD which is the net worth statement that you have prepared?

A. Miscellaneous accounts and claims receivable.

Q. Do you have a separate schedule for that, too?

A. Yes, the detail of that item will be found in schedule 2, item C. That is page 2 of schedule 2.

Q. And how have you entitled that item appearing on the second page of Exhibit DE? [2192]

A. Miscellaneous accounts and claims receivable.

Q. What is the first item that you have there under accounts receivable?

A. The first item is account receivable and under that category I have placed the amount due from Chan Bow Kay of \$17,000 at the end of 1944 and the account due from David Chew in the amount of \$3,000 at the end of 1945.

Q. Now, have a reference there to the testimony in respect to the placing of the amount of \$17,000 as receivable at the beginning of the period?

A. Yes, I refer to page 1294 of the report.

Q. And that is the testimony of what witness?

(Testimony of Frank T. Andrews.)

A. Chan Doak Chow.

Q. Chan Doak Chow, is that correct? Now, I notice that you have the \$17,000 appearing at the opening but you do not have it appearing at the closing, and what is the reason for that, based upon the testimony in this case?

A. The account was paid during the year 1945.

Q. And in connection with that do you have reference to the testimony on that subject bearing upon the payment of that \$17,000 on or about September 13, 1945?      A. Yes.

Q. Similarly with David Chew you do not have the \$3,000 at the opening, do you?

A. No. [2193]

Q. Is that based upon the fact that the \$3,000 was loaned by the defendant to Mr. Chew during the course of the year?

A. According to Mr. Chew's testimony.

Q. So that you have included it then at the end of the period, have you?      A. Yes.

Q. Now, what are the other items of these miscellaneous accounts and claims that you have listed in Item C there?

A. Well, under the heading of claims receivable I have listed claim against the estate of Wilbur Pierce in the amount of \$17,509.47 at the end of 1944, and \$20,935.07 at the end of 1945. Also, the American Distilling Company stock deal—

Q. Well now, before you go on to that, on what have you based your entry of the first claim, which is the claim against the estate of Wilbur Pierce?

(Testimony of Frank T. Andrews.)

A. Exhibit 257 in evidence.

Q. And is that the photostat of the claim that Mr. Farley produced and was filed with the Superior Court in Alameda County by the defendant?

A. Yes.

Q. All right. Now, will you please take up this item referring to the American Distilling Company stock?

A. According to Internal Revenue Agent Wiley that amount was—the amount of \$61,000 was due to Chin Lim Mow at the [2194] end of 1944 and at the end of 1945.

Q. So you have taken Mr. Wiley's statement in that respect? A. Yes.

Q. How about the next item?

A. The next two items, United Trading Corporation and United Food Supply Company appear to be a claim against Howard Chang, the first in the amount of \$10,000 at the end of 1944, and also at the end of 1945. The check in the amount of \$23,937.71 at the end of 1944 and at the end of 1945, and both of these items are shown in Exhibit 242.

Q. And is that the document that Mrs. Evelyn Lee Chang produced here in court, which was an English translation of a claim according to her testimony made by the defendant? A. Yes.

Q. Now, you have calculated the totals of these details, have you, on item C? A. Yes.

Q. And what do you do with those totals after you calculate them?

(Testimony of Frank T. Andrews.)

A. I carry them to the statement of net worth, Exhibit DD.

Q. And that is the first single sheet that you have here? A. Yes, sir.

Q. Is that correct? And will you tell us then what those miscellaneous accounts and claims receivable are carried at and the various [2195] dates?

A. At the close of 1944, \$129,147.18, and at the end of 1945, \$118,872.78.

Q. What is the next item that you have on Exhibit DD? A. The next item is deposits.

Q. And do you have a supporting schedule for that?

A. Yes, detail of that account will be found in schedule 2, page 2, item D.

Q. Now, will you kindly explain to us what deposits you have taken into account in your schedule item D?

A. Under date of October 24, 1944, a deposit was made in connection with the Mandarin Theater of \$2,000, according to the testimony of Mr. Hogan at page 585 of the reporters' transcript.

On October 27, 1944, a further deposit in connection with the Mandarin Theatre of \$3,000, which is found at the same page of the transcript.

On November 6, 1944, a deposit of Hobart & Telegraph of \$2,500 in accordance with Mr. Olgivie's testimony on page 715.

On November 14, 1944, a further deposit in connection with Hobard and Telegraph, \$12,500, also in accordance with Mr. Ogilvie's testimony.

(Testimony of Frank T. Andrews.)

On December 14, 1944, a deposit of 23rd and Broadway in the amount of \$5,000, also in connection with Mr. Ogilvie's testimony.

On December 16, 1944, a deposit of \$500 on 1555 Oak [2196] Street in accordance with Mr. Corbett's testimony at page 290 of the transcript.

At an unknown date, an unknown day in December, 1945, \$4,500 was given to Mr. Joseph R. Deasy, and that is in accordance with the testimony of the first trial which was read into the evidence here by Mr. Fleming.

Q. And have you included that as a part of the defendant's closing net worth?           A. I have.

Q. Now, there was some testimony here and some reference made by the Government to an item of \$500 appearing upon the books of Mr. Hogan, the real estate agent, and pertaining to the premises at 18 to 20 Waverly Place. Do you recall that testimony?           A. Yes, I do.

Q. I believe that the entry as referred to by the Government and as carried on Mr. Hogan's books, was an entry under the name of Evelyn Lee Chang. Do you recall that?           A. I do.

Q. Now, have you included that \$500 in this detail?           A. I have not.

Q. Do you recall whether it would be an addition at the opening or an addition at the closing?

A. It would be an addition at the opening and by reason of not putting it in my statement it is a disadvantage to [2197] Mr. Chan in the calculations which I have made.



(Testimony of Frank T. Andrews.)

Q. If you had put it in like the Government it would have been an advantage to him to do so, is that correct? A. That's correct.

Q. Now, I will ask you to give me the calculations of the totals then from Item D?

A. Total deposits at the end of 1944, \$25,500; at the close of 1945, \$4,500.

Q. Now, have you carried those over to your net worth statement, which is Exhibit DD?

A. I have.

Q. What is the next item that you have on Exhibit DD under the classification of assets?

A. Cash surrender value of life insurance. At the close of 1944, \$26,771.54, and at the end of 1945, \$31,664.43.

Q. Now, are those the figures that the Government and the defense agreed upon for the purposes of this trial and were stipulated to and filed with the court? A. They are.

Q. And the next item, what do you have?

A. Securities.

Q. And do you have a supporting schedule for that?

A. Yes, that will be found on page 2 of schedule 2, Item E, and the item consists of United States government bonds, \$56.25 at the end of 1944, and \$6,056.25 at the end of 1945, [2198] and Western Department Store Company stock, \$3,420.97 at the end of 1944, and none at the end of 1945.

Q. What was the basis of your detail on the government bonds? A. Exhibit 274.

(Testimony of Frank T. Andrews.)

Q. And in taking the government bonds did you take only those bonds that were registered in the name of the defendant and his wife?

A. Yes.

Q. How about the Western Department Store stock? I notice that you have carried none of that asset at the close.

A. Because the stock was sold in 1945.

Q. And that is reflected in the tax return, is it?

A. Yes, sir.

Q. You refer there to Exhibit 1, is that a reference to the tax return of the defendant?

A. Yes, sir.

Q. What totals have you calculated then for the schedule on securities?

A. Total at the close of 1944, \$3,477.22 and \$6,056.25 at the end of 1945.

Q. What is the next item of assets that you have?

A. Real estate. And the detail of that item is found in Schedule 2, page 2, item F.

Q. That is the second page of Exhibit DE, is it? [2199]

A. Yes.

Q. Now, will you kindly explain what you have done there to arrive at the totals that you have included in your net worth statement?

A. This is another tabulation that I inserted in the schedules in this manner because I thought it would be easier to understand when reading the statement of net worth.

(Testimony of Frank T. Andrews.)

Q. Now, is it all based on the evidence in the case?           A. It is.

Q. You explain it to us, please?

A. The first item is land and improvements, and the second item is less depreciation, and the third item is add Pierce Building. For the end of 1944 I show the land and improvements \$288,975.43, and have subtracted from it the depreciation of \$32,628.49, and I show a depreciated value of \$256,346.94.

Q. Now, let me ask you right there, is that good accounting practice to handle it the way you have handled it?

A. Because that is the way it is customarily handled, with the exception of public utilities.

Q. In other words, the depreciation figure is made a part by you here in this analysis, is made a part of the figure which is included in the asset portion of the balance sheet, is that correct?

A. That's correct. [2200]

Q. And you do not carry the depreciation figure separately as a liability entry, is that correct?

A. That's right.

Q. Now, what is the figure commonly called and what do you call it in this instance which is arrived at by subtracting the depreciation figure from the figure representing the land and improvements?

A. The figure of depreciation is the theoretical figure and ordinarily it would be just as correct to carry the figure of \$256,346.94 by itself as the value of land and buildings. It would be just as correct

(Testimony of Frank T. Andrews.)

to show that item by itself. But in order to be informative, many balance sheets, statements of net worth show what the depreciation is calculated to be and subtracted from the asset value and come to the value of the land and improvements. That is what it is, the depreciated figure is the theoretical, actual value—theoretical and yet actual, because there is no way of figuring depreciation except on the basis of theoretical life, so therefore I would say that the \$256,346.94 is the true value.

Q. Now, have you made a similar subtraction for the value of the land and improvements at the end of 1945?      A. Yes.

Q. And what figure do you arrive at for depreciated cost of the assets at that time? [2201]

A. \$531,244.55.

Q. Now, you say you have added the Pierce Building, is that correct?

A. I added the net worth of the Pierce Building.

Q. And was that a figure, was it obtained from the evidence?      A. Yes, sir. [2202]

Q. Did you make any adjustments to the figure of net worth—withdraw that. Tell us, Mr. Andrews, where you obtained the figures that you have here for the Pierce Building at the end of 1944 and at the end of 1945?

A. I took those from exhibit 316, both of them, but at the close of 1945, I made a subtraction of \$123.89 for the distributive share of Howard Chang in the operating profit of the Pierce Building in 1945. I did that on the authority of exhibit 30.

(Testimony of Frank T. Andrews.)

Q. Now, have you calculated, then, the totals for 1944 and 1945 with respect to the item entitled "Real estate"?

A. Yes. I show a total at the end of 1944 of \$301,969.35; and at the close of 1945, \$576,404.09.

Q. What is the next item that you have on exhibit DD?

A. Lions Den.

Q. And how have you carried that?

A. At the close of 1944, the value, \$25,000, and the same at the end of 1945, in accordance with exhibit 283.

Q. In other words, have you carried that the same way the government has carried it, according to the evidence?

A. Yes.

Q. And what is the next entry you have under "Assets" on exhibit DD?

A. "Admay Company partnership interest."

Q. Do you have a separate schedule on [2203] that?

A. Yes, sir. That is found in schedule 2, page 3, item G.

Q. Now, will you tell us generally, before you go over the details of this Admay Company schedule, tell us generally what you have done on this separate schedule.

A. Well, I have assembled in one place all of the assets that I could find in the evidence of the Admay co-partnership.

Q. And what is the first asset that you treat in this schedule, item G?



(Testimony of Frank T. Andrews.)

A. "Account receivable, Gerdon Land Company," which is the adjusted amount as segregated by Mr. Wilkinson on the blackboard here this morning.

Q. Then what have you in 1944 and what have you in 1945?

A. At the end of 1944, \$39,519.01; at the close of 1945, \$801,825.70.

Q. The second item is what, Mr. Andrews?

A. Account receivable from the Elite Company.

Q. What entries have you there?

A. At the close of 1944, \$27,330. At the end of 1945, none.

Q. Can you tell us where you obtained the opening figure of \$27,330, and what you did according to the evidence in order to arrive at that figure?

A. I obtained that figure from exhibit 270, and that figure represents the amount that was paid to Admay by the Elite Company in 1945 as shown by that schedule.

Q. And does it also represent the amounts paid to Admay by [2204] the Elite Company, according to the various checks which were introduced in evidence here, checks of the Elite Company?

A. Yes.

Q. The next item is what?

A. The next item is "Elite Company investment."

Q. When you say "investment," investment of whom or what?

A. Investment of Admay in the Elite Company.

(Testimony of Frank T. Andrews.)

Q. And what have you there at the end of 1944 and at the end of 1945?

A. I have no balance at the end of 1944, and the amount of \$11,400 at the end of 1945.

Q. What is the basis of your inclusion of this amount, Mr. Andrews?

A. The basis is exhibit 270, and I have made an adjustment and have reduced—I would like to change that. I have made an adjustment. Exhibit 270 shows the investment of Admay at the close of 1945 in the amount of \$16,000. I have reduced that amount by \$4,600. This \$4,600 represents an adjustment to the capital investment in the Elite Company.

Q. Now, is that the \$4,600 about which there was testimony during the testimony of Mr. Farley as to the source of the \$4,600 as an intended capital investment for three gentlemen whose Chinese names were read off to the Court here? Is that the same \$4,600 item?

A. Same \$4,600 item. [2205]

Q. What is the next item that you have there for Admay Company?

A. The next item is the Bank of Canton commercial account, which is the same figure that the government includes in its schedule of cash in banks and on hand.

Q. And what is the figure at the end of 1944 and what is the figure at the end of 1945?

A. At the end of 1944, \$3,603.72; at the end of 1945, \$2,000.43.

(Testimony of Frank T. Andrews.)

Q. Now, the next item, or the next three items are items pertaining—strike that. The next five items are items pertaining to the operations of certain hotels and an auto court by the Admay co-partnership, are they not?

A. No, those five items represent the net worth of the five Admay hotels as shown by the balance sheets prepared by, I believe it was, Internal Revenue Agent Farley.

Q. My question was merely directed to this point: that they are the same establishments that are represented in the Admay partnership return as having been operated by the Admay Company.

A. Oh, the hotels?

Q. Yes. A. Yes. Oh, yes.

Q. But these figures represent net worth, do they? A. They do.

Q. And you have taken Mr. Farley's figures in each instance? [2206] A. Yes.

Q. Without having to detail those figures for us, can you tell us at what totals you arrived for these nine assets that pertain to the Admay Company?

A. At the end of 1944, \$83,470.17; at the close of 1945, \$109,571.15.

Q. Now, at my instructions did you take a divisible sixth of that and charge it to the defendant, who appeared as one-sixth partner in the Admay Company? A. I did.

Q. And what is that calculation that you have made, or that quotient that you have arrived at?

(Testimony of Frank T. Andrews.)

A. At the end of 1944, \$13,911.69; at the end of 1945, \$18,261.86.

Q. Now, what have you done with those figures, with those totals that appear on that schedule 2G?

A. I have carried them to exhibit DD.

Q. The next entry under "Assets" in exhibit DD is what, Mr. Andrews, please?

A. Wai Yuen Club.

Q. And have you a separate schedule explaining your calculations for this entry?

A. Yes. That will be found on page 3 of schedule 2 under item H.

Q. Will you kindly turn to that item H of exhibit DE and [2207] explain to us generally, first what you have done there?

A. I have assembled from the testimony, and in one instance at your direction, the accountancy pertaining to the Wai Yuen Club, Wai Fong Company and Wai Lee Company at the end of 1944 and 1945.

Q. Have you in preparing this detail classified your material under two groups, assets and liabilities?      A. Yes.

Q. Tell us what is the first asset that you have on the separate schedule.

A. The first asset is the bank account which, at the end of 1944, was an overdraft of \$942.46, and at the close of 1945 was a balance of \$1,135.90.

Q. And the next item?

A. The next item is deposit on lease, \$500 at the end of each year.

Q. What is the basis of that item, please?

(Testimony of Frank T. Andrews.)

A. Exhibit 186.

Q. Is that that portion of exhibit which was testified to by the witness David Shew?

A. Yes.

Q. And the next item?

A. Furniture and fixtures. This is a depreciated figure, \$992.11 at the end of 1944 and \$5,877.63 at the end of 1945.

Q. Is that based on Mr. Shew's same [2208] exhibit?

A. Yes.

Q. And the next figure or entries?

A. The next entry is "building," and that is likewise a depreciated figure, \$21,331.90 at the end of 1944; \$30,146.66 at the end of 1945.

Q. And the next figure?

A. The next figure is "Cash on hand," at the end of 1944, \$47,259.40; at the end of 1945, none.

Q. Now, did you make those entries for cash on hand at my instructions?

A. I did.

Q. Is the \$47,259.40 the actual amount according to the testimony of Inspector Overstreet—strike that. Have you included in this figure or by using this figure of \$47,259.40 the actual amount testified to by Inspector Overstreet?

A. It includes the sum of \$42,259.40 which the Inspector says he seized at the club on February 4, 1945, and his estimate of \$5,000 in coin.

Q. Now, is this the same figure that Mr. Brady testified about in connection with his testimony about an estimated figure that he used of \$50,000?

A. Well, I can't speak for how Mr. Brady con-



(Testimony of Frank T. Andrews.)

sidered it. However, the \$50,000 which he put in his balance sheet can be compared with this figure of \$47,259.40 which I have placed in my balance [2209] sheet.

Q. Well, my question was directed to this point: is the \$47,000 figure that you have, is that a figure obtained from the same incident in the testimony as the \$47,000 figure that Mr. Brady mentioned which was the basis for his \$50,000 figure?

A. Well, he refers to the same testimony.

Q. All right. Now, in placing this figure of \$47,-259.40 as an asset at December 31, 1944, of the Wai Yuen Club, did you consider the testimony of Inspector Overstreet that the Club he raided and from which he got that money was the Wai Yuen Club?

A. The Wai Yuen Club.

Q. Do you have any figure for cash on hand for the Wai Yuen Club at December 31, 1945?

A. No.

Q. Have you found any figure in the evidence as cash on hand for that club at December 31, 1945?

A. No.

Q. You have some liabilities calculated there for the Wai Yuen Club, and will you kindly explain that to us, which appear in the lower portion of your exhibit, schedule item H?

A. Withholding tax payable end of 1944, none; close of 1945, \$5,219.80, in accordance with exhibit 186. And loans payable, \$32,000 at the close of 1944, and \$48,000 at the close of 1945, also in accordance with exhibit 186.

(Testimony of Frank T. Andrews.)

Q. Is that \$5,219.80 figure the figure that was developed by [2210] Mr. Shew on his balance sheet?

A. Yes.

Q. And by the loans payable figures the same figures that appear on the material developed by Mr. Shew, and also appear on his worksheets and about which he testified here in Court?

A. They are.

Q. Now, have you made a subtraction—well, strike that. What is your next figure?

A. My next figure is net worth.

Q. And how is that obtained?

A. That figure is obtained at the end of 1944 by subtracting the liabilities of \$32,000 from the total assets of \$69,140.95.

Q. And as—

A. The net worth then was \$37,140.95.

Q. What have you done comparably for the date 12/31/45?

A. I have subtracted the amount of withholding tax and loans payable, which total \$53,219.80, algebraically on the total assets at the end of 1945 of \$37,658.19, which, for the purposes of convenience, shows a negative net worth of \$15,561.61.

Q. Now, what have you done with the net worth figure which you have calculated on exhibit 2H?

A. I have inserted them on exhibit DD.

Q. Now, do the figures which you have inserted on exhibit DD opposite the entry "Wai Yuen Club" represent the net worth of the defendant as calculated by you? [2211]

A. Yes.

(Testimony of Frank T. Andrews.)

Q. In other words, you are treating him as the sole proprietor in this instance, aren't you?

A. Oh, yes.

Q. What is the next entry that you have there?

A. Wai Lee Company.

Q. Now, is that the liquor company?

A. Yes, that is the liquor store.

Q. And what figure do you have at December 31, 1944, and December 31, 1945?

A. At the close of 1944 I show a value of \$1,333.40; and at the end of 1945, \$3,208.53.

Q. Now, will you kindly tell us the basis of your calculations of the two figures you have just read?

A. The amounts shown on exhibit 282 in evidence.

Q. And the next entry you have is what?

A. Elite Company.

Q. Will you please give us the figures?

A. At the end of 1944, \$20,100; at the end of 1945, \$15,000.

Q. And what is the basis of those figures which result in the two amounts you have given us?

A. The figure at the end of 1944 represents the sum of the checks paid to Chin Lim Mow or taken by him in 1945, plus his capital interest at the end of 1944.

Q. Can you give us a breakdown on that or have you that in [2212] your work papers?

A. Yes. The checks issued to him or taken by him were \$13,100. The capital investment was \$7,000.

(Testimony of Frank T. Andrews.)

Q. And that makes a total of \$20,100?

A. Yes, sir.

Q. Do those figures which you have just given us as the breakdown of that figure of \$20,100 appear on exhibit 270, which was the schedule introduced here by Mr. Farley, the revenue agent?

A. I took the figures from exhibit 270.

Q. How did you arrive at the figure of \$15,000, Mr. Andrews, for the Elite Company at December 31, 1945?

A. That is the amount shown on exhibit 270 as capital contributions of Chin Lim Mow and his wife.

Q. Do you recall what those amounts were that comprise the total of \$15,000?

A. Yes. His capital interest was \$8,000 and his wife's, \$7,000.

Q. What is the next entry that you have under "Assets" in exhibit DD?

A. Tai Sun Company, partnership interest.

Q. And what are the figures for that, please?

A. \$1,000 at the end of each year.

Q. And the next entry?

A. Western Supply Company, partnership interest, \$500 at the [2213] end of each year.

Q. Now, have you prepared each of those last two entries upon the testimony of Mr. Wiley, the former revenue agent?      A. Yes.

Q. Did you make an addition of all the assets of the defendant and his wife at the end of 1944 and at the end of 1945?

(Testimony of Frank T. Andrews.)

A. Yes. At the end of 1944 they total \$960,-523.69; and \$1,077,348.12 at the close of 1945.

Q. Now, the next part of your net worth statement pertains to what general classification?

A. Liabilities and net worth.

Q. And what is the first item of liabilities that you have there on exhibit DD?

A. Real estate loans.

Q. And what figure do you have for real estate loans in each of those date you have heretofore indicated?

A. At the close of 1944, \$112,449.76; at the end of 1945, \$265,066.71.

Q. Where did you get those figures?

A. From exhibit 311.

Q. Were those the figures that were stipulated to and agreed to between the defense and the government for the purposes of this trial?

A. Yes, sir.

Q. 311 is the written stipulation, is it not? [2214]

A. Yes, sir.

Q. You examined that, did you? A. Yes.

Q. And the next entry you have is what?

A. "Loans on life insurance at the close of 1944, \$18,703.40; at the end of 1945, \$20,021.68."

Q. Is that also based upon the figures that were agreed to and incorporated in a written stipulation between the defense and the government?

A. Yes.

Q. And the third item of liabilities is what?



(Testimony of Frank T. Andrews.)

A. Hogan and Vest first report, at the end of 1944, none; at the end of 1945, \$5,000.

Q. What is the basis of the testimony with respect to this loan, do you recall?

A. It is the testimony of Mr. Hogan at page 587 of the reporter's transcript.

Q. And do you recall the testimony here of Mr. Brady in which I asked him some questions about an entry he had on his detail of deposits for \$5,000 at December 31st, 1945? Do you recall that?

A. Yes, I recall it.

Q. Do you recall I have—strike that. Did you examine the transcript in ascertaining or verifying the \$5,000 item which you have here listed as a liability? [2215]

A. Yes, sir.

Q. Do you find any deposit of \$5,000 resulting from the transactions testified to by Mr. Hogan which is a deposit to be carried at December 31, 1945, for the Manadrin Theatre; that is, did you find an asset rather than a liability?

A. Well, I thought that Mr. Brady explained that situation satisfactorily. He showed an asset and a liability, but that was a slip of the pen.

Q. Yes. In other words, those washed themselves out, as you accountants say, is that correct?

A. Yes.

The Court: I believe we will take a recess now. We will adjourn now, ladies and gentlemen of the jury, until two o'clock this afternoon. Bear in mind the admonition heretofore given you.

(Testimony of Frank T. Andrews.)

(Thereupon this cause was adjourned till the hour of two o'clock p.m. this date.) [2216]

October 13, 1952. 2:00 P.M.

The Court: You may proceed, gentlemen.

FRANK T. ANDREWS

called as a witness on behalf of the defendant, resumed the stand, previously sworn.

Direct Examination

(Continued)

By Mr. Sullivan:

Q. Mr. Andrews, at the time of the luncheon recess we had reached a point in your explanation of Exhibit DD where the total liabilities or total of the liability items appear. Have you calculated a total for the liabilities? A. Yes.

Q. And what is that?

A. The total liabilities at the end of 1944, \$131,153.16; at the end of 1945, \$290,088.39.

Q. Now, is the figure of net worth obtained by subtracting the liabilities from the assets?

A. Yes, it is.

Q. And did you make that subtraction in this case? A. I did.

Q. And what did you arrive at for the net worth of the defendant at December 31, 1944?

A. \$829,370.53. [2217]

Q. And at December 31, 1945?

(Testimony of Frank T. Andrews.)

A. \$787,259.73.

Q. Now, according to your calculations did the net worth of the defendant increase or decrease during the year 1945, which is the year charged in the indictment in this case?

A. There was a decrease.

Q. And can you give us the amount of that decrease?      A. It is \$42,110.80.

Q. Do you obtain that decrease in this instance by subtracting the smaller of the figures from the larger?      A. Yes.

Q. And is this then a negative figure?

A. That is a negative figure.

Q. Indicated by parentheses?      A. Yes.

Q. Now, Mr. Andrews, this morning in discussing one of the items of the assets, namely, the bank accounts, you told the ladies and gentlemen that upon my instructions you had taken in the instances where the bank accounts were in the names of other people along with the defendant or his wife, you had only taken a portion of the bank account, that is, a half or a third, as the case may be. You recall that testimony?      A. Yes, I do.

Q. Now, by so doing did that result in an advantage to the [2218] defendant in these calculations or did it result in a disadvantage?

A. It was a disadvantage to the defendant because the amounts that were eliminated at the end of 1944 were larger than the amounts eliminated at the end of 1945.

Q. And I also note that you have a footnote to

(Testimony of Frank T. Andrews.)

Exhibit DD which is made in reference to the balance sheet you have just explained for us. Would you mind reading that note for us?

A. It says, "Note: for lack of evidence the foregoing assets show no value for the defendant's interest in American Four company and Hing Wah Tai Company."

Q. Did you make an examination of the evidence in this case both the testimony of the witnesses and the documentary evidence to ascertain if you could find information which you could use as a balance sheet information for those companies?

A. I looked for the information, but could not find any.

Q. Now, you have then a calculation of a decrease in net worth of \$42,110.80, is that correct?

A. Yes.

Q. And what is the next calculation then that you have on Exhibit DD?

A. The next calculation is add back to an increase in net worth non-deductible expenses. [2219]

Q. Now, is that the same procedure that the Government followed?           A. Yes.

Q. And have you used the same additions back to net worth that the Government used?

A. Yes.

Q. And then did you make certain subtractions from the adjusted figure after that?

A. Yes, I subtract non-taxable income.

Q. Is that the same figure that is subtracted by the Government in its calculations?

(Testimony of Frank T. Andrews.)

A. Yes.

Q. And what do you arrive at then as the figure representing taxable net income on a net worth basis for Mr. Chan and his wife?      A. \$121.42.

Q. Now, according to the established formula of a net worth calculation do you now proceed to make a comparison of this taxable net income figure with something?      A. Yes.

Q. And what do you compare it with?

A. I compare it with the net income reported in the income tax returns of Chin Lim Mow and his wife.

Q. Now, have you in your balance sheet included only those assets which refer to the defendant, Mr. Chin Lim Mow, and [2220] his wife?

A. I have included such items as appears, able to identify, as pertaining to Chin Lim Mow and his wife.

Q. Have you excluded assets that you identified as pertaining or being carried under the name of members of his family?      A. Yes, I have.

Q. Now, in making the comparison then do you compare Mr. Chin Lim Mow's assets only with his reported income?      A. Yes.

Q. In doing that, Mr. Andrews, do you conform to accountancy practice to your tax practice?

A. Exactly.

Q. Now, can you tell us what is meant by you accountants when you say that you conform the accountancy practice and the tax practice when you



(Testimony of Frank T. Andrews.)

make these calculations of a net worth reconstructed figure?

A. Well, broadly speaking, where we have business assets, that is, assets plus income, in determining a taxable net income on a net worth basis we compare the increase in those assets as adjusted by non-deductible expenses or non-taxable income with the income reported in the return of the persons who own those assets.

Q. Now, what do you find then or what do you have as a figure with you compare the taxable net income figure of \$121.42? [2221]

A. The net income reported by Chin Lim Mow and his wife for the year 1945 was \$54,341.66.

Q. Now, does that result then in, for the purposes of this calculation, an under-reporting of income or an over-reporting of income?

A. It indicates that the income reported was excessive.

Q. To what extent?

A. To the extent of \$54,220.24.

Q. Is that a negative figure?

A. That would be a negative figure.

Q. Now, Mr. Andrews, have you found any testimony in this record on living expenses?

A. No, sir.

Q. If you were required in your calculation to take into account a factor of living expenses, what would happen to that figure of \$54,220.24?

A. It would be reduced.

(Testimony of Frank T. Andrews.)

Q. By the amount that had been determined upon for living expenses, is that correct?

A. That's correct.

Q. So it would be a figure which would be less than \$54,000—or put it this way: a figure between \$54,220.24 and zero, would it?      A. Yes, sir.

Q. Now, Mr. Andrews, is it your testimony then in giving [2222] us this figure of \$54,220.24 that this man, Mr. Chan, actually paid too much income in that amount to the United States Government; is that your testimony?

A. That he paid too much income tax or do you mean that he reported too much?

Q. That he reported too much, rather.

A. On the basis of the testimony and evidence introduced I must arrive at the figure of \$54,220.24 over-reported.

Q. In other words, this calculation you have made is arrived at on the basis purely on the evidence in the case, is that correct?

A. That's right.

Mr. Sullivan: No further questions.

### Cross-Examination

By Mr. Fleming:

Q. Mr. Andrews, at the last trial you arrived at a figure of \$80,000 over-reported income, did you not?

A. That figure of \$80,000 was calculated on a different basis.

(Testimony of Frank T. Andrews.)

Q. I see.

A. At that time in those statements—

Q. Well, you first answer the question.

Mr. Sullivan: I submit that the witness should be permitted to answer the question, your Honor. He was in the process of explaining it. [2223]

The Court: You may do so.

A. (Continuing): At that time the statements were calculated that is, the net worth statements were calculated on the basis of assets belonging to the Chin family, and the adjusted increase in net worth or income on a net worth basis was compared with the income of the Chin family. In making that calculation it came out to an indicated over-reported income, I believe, of around \$80,000.

Q. Now, you are making a calculation at this time on a different basis?      A. Yes, I am.

Q. Now, the figures you have given us, are those based on your professional opinion as an accountant?

A. I am a professional accountant, and I would say that the figures that I have set down are set down in a professional manner. Some of the figures I have set down of my own volition; some of them where they involved matters on which an accountant must rely on an attorney, which happens in many cases, in our ordinary practice of accountancy, I have had to do that here.

Q. Well, are these defense contentions or your own opinion as an accountant, the figures you have given us?

(Testimony of Frank T. Andrews.)

A. I have just explained that.

Q. Will you answer the question, please?

A. In some instances, I put down the figures as matters [2224] of accountancy which I could put down myself. In other cases I have had to obtain the direction of Mr. Sullivan.

Q. I take it then in some cases you put down figures which you were told to do by Mr. Sullivan?

A. Well, we discussed all of these figures and in some instances where there was a legal question involved I put them down at his direction.

Q. And in some cases you undertook to weigh and analyze the evidence yourself, is that correct?

A. Well, let me put it this way: in some cases I didn't have to do any weighing, the figures were there and I put them down.

Q. And you were the one who made that determination?      A. I put them down.

Q. You made the determination yourself without any assistance from Mr. Sullivan as to some of these figures, is that it?

A. Yes, that is right.

Q. And in doing so you were expressing your professional opinion?

A. I don't agree with that at all.

Q. What were you doing?

A. I put them down because they were in the evidence; I didn't have to express any opinion.

Q. You were the one who chose those figures, were you not, chose to put them down? [2225]

A. No, in most case you chose the figures, you

(Testimony of Frank T. Andrews.)

were the one that brought them out during the trial, not me.

Q. You didn't put down all the Government's figures, did you?

A. All of the Government's figures?

Q. Yes.

A. You mean all the figures that are on the Government's balance sheet?

Q. Yes.

A. No, I think that that balance sheet is wrong.

Q. My question is you didn't put them all down and in not putting them all down you then made a selection, did you not?

A. Because I did not put all the Government's figures down I made a selection? I wouldn't say so.

Q. Who made the selection, Mr. Sullivan?

A. Well, no, let us not become confused. I put down what I thought should be put down.

Q. And in that you were expressing your professional opinion?

A. No, I just told you that I didn't think I was doing that, I was just putting down what was in evidence.

Q. You put down what you determined was the important parts of the evidence, is that it?

A. No, I put down all the figures that I found in evidence that pertained to Mr. Chin Lim Mow and his wife and their net worth. [2226]

Q. Who made that determination as to whether these figures pertained to Chin Lim Mow and his wife?



(Testimony of Frank T. Andrews.)

A. Who made that? Those are taken from the evidence, and as I say, in some instances, under the direction of Mr. Sullivan.

Q. Did you make the determination in the other instances? A. Most cases I did, yes.

Q. So that at least partially these figures then represent your determination of what were the relevant figures in the case?

A. I put down the figures that were developed during the course of the trial that pertained to the net worth of Chin Lim Mow.

Q. Now, in putting down some of these figures and not others, you then exercised your judgment as to what figures should be put down, did you not?

A. Well, I think that would be necessary.

Q. So that at least to that extent the documents which you have presented reflect your judgment?

A. No, only in this way: that there were certain figures that I put down at the direction of Mr. Sullivan. The rest of the figures that I put down were the figures that I found in the evidence. I didn't have to exercise much judgment in putting them down.

Q. You had to exercise some, didn't you, Mr. Andrews? [2227]

A. Yes, that is right, and I did.

Q. And you were the one that exercised that?

A. I was the one.

Q. And are you employed by the defendant Chin Lim Mow? A. Yes, I am.

(Testimony of Frank T. Andrews.)

Q. And did you, were you employed by him at the first trial?      A. Yes.

Q. And you were paid a fee for your services?

A. I was.

Q. So at least to the extent of that your opinion was influenced by the fact of your employment?

A. I think that that's silly.

Q. What is that answer?

A. I say, I think that is silly. That my opinion was influenced because I received a fee for compiling figures? No.

Q. Is it your testimony that the fact that you received a fee had no influence whatsoever on your actions?      A. None whatsoever.

Q. Very well. Now, in arriving at the calculation and exercising your opinion and receiving—and in some cases receiving the directions of Mr. Sullivan in other cases, you were forced to make certain assumptions, were you not, with respect to the evidence?

A. I was—yes, I was forced to assume that some of the [2228] figures——

Q. I didn't ask you what assumptions, I asked you if you were forced to make any assumptions.

A. Yes, I was.

Q. Will you answer that?

A. Well, for example, the Government calculated depreciation on these buildings that the defendant owned, and for the purposes of these statements I have assumed that the rates of depreciation that were taken were adequate.

(Testimony of Frank T. Andrews.)

Q. You assume that the bonus checks in the Wai Yuen Club were proper payments?

A. Indeed I did.

Q. You assumed that the liabilities were proper and true liabilities?

A. That is the evidence in this case.

Q. I didn't ask you about the evidence, I asked you whether you assumed that, Mr. Andrews. Will you answer the question?

A. I assumed it from the evidence.

Q. Your answer is you did assume those were proper liabilities? A. Yes, indeed.

Q. Did you assume there was a proper liability of \$11,000 to Chan Bat at the end of 1945?

A. I did.

Q. And did you assume that other liabilities to the so-called Wai Yuen employees as shown in that balance sheet? [2229]

A. I assumed that from the evidence.

Q. Did you assume the \$220,000 in cash on hand as indicated by the same exhibit?

A. I did not.

Q. You assumed that there was not?

A. I didn't assume that, that is the testimony.

Q. I am asking you what you assumed, asking you if you assumed that \$220,000 cash on hand?

A. I didn't have to assume that, the testimony says it is wrong.

Q. I didn't ask you that, I am asking you what you did, did you assume that?

(Testimony of Frank T. Andrews.)

A. I make no assumption——

Mr. Sullivan: I submit, your Honor, the witness has answered.

Q. (By Mr. Fleming): You assumed it was not?

The Court: He has answered it.

Q. (By Mr. Fleming): Did you assume that there was no Wai Yuen bank roll at the end of the year 1945?

A. There was no evidence on that.

Q. I am asking you if you assumed there was no bank roll at the end of '45 in making these calculations?

A. I have no alternative when there is nothing in the record, I can't——

Q. Is it your answer you did or you did not assume there [2230] was no bank roll?

A. I made no assumption at all.

Q. Included in that amount for bank roll at the end of 1945?      A. No.

Q. Did you examine the defendant's tax return for the year 1946 and observe that he reported an income of \$30,447.83 as income from the Wai Yuen during the year 1946, did you make that examination?      A. Yes.

Q. Did you examine the defendant's 1947 tax return indicating an income from the same source for that year of \$25,544.55?      A. No.

Q. You did not examine that return. Were you aware of that?      A. No, I was not.

Q. That he had reported that sum?

(Testimony of Frank T. Andrews.)

A. No.

Q. Now, did you also assume the validity of the Admay so-called partnership in making your calculations?      A. Yes.

Q. Did you assume the validity of the other partnerships tax returns which have appeared in evidence as being valid partnerships?

A. Yes, indeed.

Q. And in making your calculations they were based on such [2231] assumptions?      A. Yes.

Q. You eliminated the \$100,000, Evelyn Lee Chang account, you did not include that in any of your calculations, did you?

A. I didn't eliminate anything, I didn't include.

Q. And was that the determination which you made or Mr. Sullivan?

A. Well, Mr. Sullivan and I discussed it at considerable length and—let me put it this way: If you came to me at my office and presented all the evidence that has been presented here in regard to those accounts with Chang trustees and told me that you wanted me to prepare a balance for Chin Lim Mow and include those items in his balance sheet, I should have to refuse you.

Mr. Fleming: Will you read the question, please?

(Question read by the Reporter.)

A. Mr. Sullivan directed me to put it in.

Q. (By Mr. Fleming): Now, you also included



(Testimony of Frank T. Andrews.)

these twenty bank accounts, bank of Canton, did you not?      A. Yes.

Q. And was that a determination that you made or one which you were directed by Mr. Sullivan?

A. I was directed to do that.

Q. You also included the sum of some \$58,000 cash on hand at the beginning of the year 1945, did you not? [2232]      A. Yes.

Q. And at the end of the year you included no cash on hand?      A. That's right.

Q. Now, is that your opinion in arriving at that figure, or Mr. Sullivan's direction?

A. No, I think that I did that.

Q. Now, you included cash on hand, for example, the sum of \$25,000 which was a currency deposit on January 24, 1945, did you not?

A. Yes, I did.

Q. Is that proper accounting practice to include that figure as cash on hand as of December 31, 1944?

A. Yes, I think that that is perfectly proper under the circumstances, and of course in order to determine whether or not it is proper we have to hear the circumstances.

Q. Did you make that determination——

Mr. Sullivan: Pardon me, just a moment, please. I suggest the witness isn't finished yet. May I ask the witness if he has finished?

The Witness: I am not finished.

Mr. Fleming: I submit Mr. Sullivan shouldn't coach the witness.

(Testimony of Frank T. Andrews.)

Mr. Sullivan: I object to that, if your Honor please, and I assign that remark as misconduct.

The Court: We are not having any colloquies. Have you [2233] finished your answer?

Mr. Sullivan: Your Honor, may I ask that that assignment be made?

The Court: The assignment will not be made.

Mr. Fleming: Will you read the question?

(Question read by the Reporter.)

Mr. Sullivan: Pardon me, Mr. Witness. May I have that portion of the answer that the witness gave?

The Court: Will you read it, Mr. Reporter?

(Answer read by the Reporter.)

The Court: Had you completed your answer?

The Witness: No, sir.

The Court: All right.

The Witness (Continuing): In starting, I would like to first give a simple illustration before I go into the facts in this case. For example, let's say that a person finds in his wallet \$10 on January the 15th of some year, and this person is a working person. He has not yet received his pay check for January the 15th, or cashed it. He has no other income except his salary, and if no one gave him the \$10, I would say that it is logical that he had the \$10 on December 31, of the preceding year. [2234]

Now, in this case, it appears to me that this money that we are talking about, this \$58,000 in

(Testimony of Frank T. Andrews.)

currency that was expended by Mr. Chan between January 1st and January 24th, of 1945, did not come from any of Chan's bank accounts.

Q. Is that your assumption?

A. Well, I looked at them and I couldn't see where it did.

Secondly, I can find no evidence in this trial of any money borrowed by him in that period which he could have had in currency.

Third, there is no evidence that he withdrew any currency from any partnership that he was in during that period of time. I am speaking now between January 1st and January 24th, 1945. The proceeds of real estate rentals were either deposited by Mr. Chan or used by realtors for making payments on principal and interest on mortgages.

Now, the gross daily receipts in the Wai Yuen Gambling Club for the month of January amounted to less than was deposited in the Wai Yuen Bank account in the month of January, so it appears to me he didn't get it out of the Wai Yuen.

Next, my statement of income on a net worth basis does not disclose there was unreported income. So when we take all these circumstances into account, there is no place that this money could have come from except from funds that he had on hand at December 31, 1944, and that is the reason I have placed this sum as having been on hand at December 31st, 1944, in his [2235] net worth statement.

Q. Are you the one that made that assumption, Mr. Witness?

A. Yes, I did.

(Testimony of Frank T. Andrews.)

Q. At the last trial you said they were directions of Mr. Sullivan, did you not?

A. Yes, I believe I might have said that I discussed it with him and did it under his direction. All of these matters were discussed with Mr. Sullivan. I have placed nothing in these statements that I have not discussed with him, and he has concurred with my viewpoint and directed me to place them in the statements.

Q. So that actually the figures represent defense contentions?

A. Why, I don't—what figures do you refer to?

Q. The figures you have identified in the two charts, DE and the other chart.

A. They are only contentions to the extent that you might not agree with them.

Q. Is it the defense position that the defendant's net worth as of January 31, 1944, was \$829,-370.53?

A. No, I would say that that is the result of compiling the figures, most of which you have brought out yourself here in court.

Q. You have undertaken to analyze these figures in accordance with your own judgment, have you not?

A. To analyze the figures? I don't believe I analyzed [2236] anything.

Q. You have undertaken to determine the figure you should put down and the figures you should not put down?

A. Yes, in many cases I have.

(Testimony of Frank T. Andrews.)

Q. So when you put down a figure of net worth as of December 31st, 1944, \$829,370.53, does the defense accept that as the figure of Chin Lim Mow's net worth as of that date?

A. That is the way the evidence shows it.

Q. Now, I will direct your attention to the—I will ask you if you put anything down for cash on hand at the end of the year?

A. No, I have not.

Q. So that that one item would result in a reduction of some \$58,000 in the net worth, according to your calculations, would it not?

A. Yes, it would.

Q. Did you put down any part of the Evelyn Lee Chang \$100,000?

A. No, and I will be glad to tell you why.

Q. My question was, did you put down any of that part, any of the \$100,000?

A. That belonged to the Evelyn Lee Chang trustee account? No.

Q. 1945, then, you put down "zero cash on hand," that is correct, is it not?

A. That is because you adduced no testimony in that regard.

Q. My question is not why you did it, but what you did. [2237]

A. I only can do what is in the evidence.

Q. My question is, what did you put down for cash on hand as of 1945? What did you put down?

A. Nothing.

Q. Zero? A. Nothing.



(Testimony of Frank T. Andrews.)

Q. And to that extent, then, you exercised your own independent determination when you say you found nothing?

A. No. I showed what you put into the evidence.

Q. And you concluded "Cash on hand, zero"?

A. What else could I do?

Q. I am not asking you what else you could do, I am asking you what you did.

A. I found none, so there is none there.

Q. Very well. Now, \$100,000, Evelyn Lee Chang, I believe you stated you did not put down any of that?

A. That is true.

Q. Now, Wai Yuen bank roll—will you tell me, first, what figure the government put down for the Wai Yuen gambling bank roll at the beginning and end of 1945?

A. I don't know. I haven't the statement.

Q. Did you examine that statement?

A. I think it was \$50,000, as I remember it.

Q. Well, you are able to tell me, aren't you?

A. Yes, sir, I think it is \$50,000, for, I don't know, some [2238] seven or eight organizations.

Q. \$50,000 at the beginning and end—

Mr. Sullivan: Just a minute. If your Honor please, I object to counsel interrupting the witness, and a great deal of the importance of the answer is being lost. May I have the answer read?

The Court: Yes, you may have the answer read.

Mr. Fleming: Can I have the question read?

Q. I asked you, what figure did you put down?

(Testimony of Frank T. Andrews.)

Mr. Sullivan: I want the answer which the witness gave.

The Court: Read both the question and answer, Mr. Reporter.

(Question and answer read by the Reporter.)

Mr. Sullivan: I submit the question has been asked and answered.

Q. (By Mr. Fleming): What figure——

The Court: Have you finished your answer after you used the word “organization”?

A. Yes, sir.

Q. (By Mr. Fleming): Did you include any part of that \$50,000 in making your balance sheet as of December 31, 1945?

A. Any part of what \$50,000?

Q. \$50,000 bank roll you have just testified was the figure used by the government in its calculations. Did you include any part of that in your calculation? A. Yes, I did. [2239]

Q. How much? A. \$47,259.40.

Q. My question related to the end of 1945, and I will ask you how much you included.

A. No evidence.

Q. Well, I didn't ask you about evidence. I am asking you how much you included, Mr. Witness.

A. I can't include anything that is not in the evidence.

Q. How much did you include in that 1945?

A. There was nothing.

Q. How much did you include?

(Testimony of Frank T. Andrews.)

A. Nothing.

Q. Nothing? Now, you did, however, include \$47,259.40 at the beginning of 1945, did you not?

A. Yes, sir.

Q. That was the figure you have testified was comparable to the \$50,000 used in the government's calculations?

A. Well, I said it was comparable in a way.

Q. In a way? Now, what figure did you include for the defendant's investment in the account 20 at the end of 1945?

A. I used \$238,278.81, plus his interest in \$80,825.70.

Q. And well, what is the total?

A. Well, I would have to calculate it.

Q. Two hundred and fifty thousand, roughly?

A. Yes. [2240]

Q. What figure did you use at the first trial for the defendant's interest in account 20, Gerdon Land Company?

A. It wasn't calculated.

Q. What? A. It wasn't calculated.

Q. I said, what figure did you use?

A. It was not calculated.

Q. Is it your answer, then, you didn't use any figure for the defendant's interest in account 20?

A. I explained that at the first trial we used a different method.

Q. I am asking you not to explain, but what you did at the first trial. What figure did you include under the heading of "Chin Lim Mow" for his in-

(Testimony of Frank T. Andrews.)

terest in Gerdon Land Company under account 20?

Can you tell me that?

A. I already answered that.

Q. Well, what did you include?

A. For Chin Lim Mow and the family I included three hundred——

Q. (Interposing): I am asking you Chin Lim Mow, account 20, Gerdon Land Company, what figure did you include at the first trial as of December 31, 1945? A. I didn't calculate it.

Q. Well, do you have—do recall identifying an exhibit CF at that trial, a document Mr. Chin Lim Mow's net worth statement as of December 31, 1944, and December 31st, 1945? [2241]

A. I do not.

Q. Do you have a copy of that?

A. Yes, I have.

Q. Do you have it in front of you?

A. Yes, I have.

Q. Tell me what figure you included under the heading "Chin Lim Mow, Gerdon Land Company, account 20"?

A. I didn't calculate his interest. I calculated the interest of the family.

Q. I am not asking you what you calculated. I am asking you what figure you included?

Mr. Sullivan: If your Honor please, I submit that question has been asked and answered at least three times.

Mr. Fleming: I submit it has not been an-

(Testimony of Frank T. Andrews.)

swered. The witness is doing everything else but answering it.

The Court: If I am to accept that remark as an objection, it will be overruled.

A. The statement I prepared at the first trial——

Mr. Fleming (Interposing): I am asking you what figure——

Mr. Sullivan: If your Honor please, I object to counsel interrupting the witness.

The Court: Well——

Mr. Fleming: I submit he can answer the question and explain it if he wishes. [2242]

The Court: Answer the question, Mr. Witness.

A. I can't, your Honor.

Q. (By Mr. Fleming): Well, let me ask you this: do you find this as headed "Chin Lim Mow, net worth statement, December 31st," do you find an item 2 listed, account 20, Gerdon Land Company, which has the figure "1945, defense, \$301,568.83"? Do you find that figure? A. Yes, I do.

Q. That was the exhibit you identified at the first trial? A. It was.

Q. What is the figure which you have included in this computation?

A. Well, as we just estimated here, around \$250,000.

Q. And what is the difference between those two figures? \$50,000, roughly?

A. Yes. The family interest.



(Testimony of Frank T. Andrews.)

Q. Now, I will ask you, going back then to the Wai Yuen Club, I will ask you what value you included for the Wai Yuen Club as of December 31st, 1945?

A. That is indicated on page 2 of schedule 2, and it shows a negative net worth, \$15,561.61.

Q. You have the Wai Yuen Club fifteen thousand and some odd dollars in the hole, is that it?

A. It would give that appearance.

Q. The government showed it as of what, do you recall? Do [2243] you recall what Mr. Brady showed that value of the Wai Yuen Club as of that day?

A. His statement is wrong.

Q. I didn't ask you that. I asked you, do you recall what figure he included?

A. No, I don't.

Q. I will show you a copy of exhibits 339 and 342, and ask you if you will keep them in front of you so you can refer to them. Will you tell me, then, the figure included by Mr. Brady at the end of 1945 for the Wai Yuen Club?

A. Well, you can't tell.

Q. What figure do you see in exhibit 339?

A. You see, he has included Wai Yuen Company in two different places.

Q. Well, my question is, what figure do you find on exhibit 339, 1945?

A. Well, in the first place, you've got "Bankroll, cash of above clubs," which includes Wai Yuen, of \$50,000.

Mr. Fleming: Will you read the question, please, Mr. Reporter?

(Testimony of Frank T. Andrews.)

Mr. Sullivan: If your Honor please, I object to this very respectfully. The witness is trying to answer the question. He said he finds money in two places, and when counsel doesn't find the answer coming out the way he wants it, he interrupts.

The Court: The answer is not responsive. Read the question, [2244] Mr. Reporter.

(Thereupon the reporter read: "Well, my question is, what figure do you find on exhibit 339, 1945?")

Q. (By Mr. Fleming): Listed for the Wai Yuen Club?

A. Yes, I see two figures. First, \$37,658.19, and some portion of \$50,000.

Q. That is this fifty thousand we have just been talking about, isn't it?           A. Yes.

Q. Now, what figure did you put down under "Wai Yuen Club, end 1945"?

A. My statement is divided into two parts, too. My statement includes as assets \$37,658.19, and as liabilities——

Mr. Fleming (Interposing): Now, Mr. Witness, I am asking you about the end of 1945; I am not asking you about 1944.

Mr. Sullivan: I submit that is what he is giving you.

Mr. Fleming: No, he is giving me the figure for 1944.

The Witness: No, I am not.

(Testimony of Frank T. Andrews.)

Mr. Sullivan: If counsel will look at the exhibit, he will see he is reading the 1945 figure.

Q. (By Mr. Fleming): What figure did you put, then?

A. I put down assets, \$37,658.19, and liabilities an aggregate \$53,219.80.

Q. Well, will you tell me what figure you put down in the net worth statement for value of the Wai Yuen Club at the end of [2245] 1944?

A. Negative net worth, \$15,561.61.

Q. That is roughly a difference of \$50,000 from Mr. Brady's figure, is it not?

A. I don't know.

Q. Well, the difference between a negative fifteen and a positive thirty-seven is at least fifty, is it not?

A. That is not what Mr. Brady has for the Wai Yuen Club. He has some cash, I don't know how much.

Q. Can you tell me the difference between those two figures? A. Between which?

Q. Figure you had under "Wai Yuen" and the figure Mr. Brady had under "Wai Yuen."

A. I don't know what figure he has for cash.

Q. You can't tell me the difference between those two figures on the charts?

A. I can show you what he has under the heading "Wai Yuen."

Q. All right, he has what he has under the heading, and the difference is roughly \$50,000, is it not? A. That is correct.

(Testimony of Frank T. Andrews.)

Q. Very well. What figure did you put down for the value of the Elite, Chin Lim Mow's interest in the Elite as of December 31st, 1944?

A. Well, that is in two places. First, he had an interest of \$20,100 at the end of 1944 and a sixth interest in \$27,330. [2246]

Q. Twenty-five thousand, roughly?

A. I would say so.

Q. What figure did you put down when you testified at the last trial for the defendant's interest in the Elite Company?

A. I didn't calculate it that way. I calculated it on a family basis.

Q. My question is, what value did you put down? Directing your attention to item 18 on the document headed "Chin Lim Mow, net worth statement as of December 31st," I will ask you what figure you put down.

A. In this statement the figure is \$43,800.

Q. My question is directed to December 31st, 1944. A. \$58,230.

Q. Now, what figure did you put down for the defendant's interest in the Elite as of December 31st, 1945, in your chart exhibit DD in this trial?

A. \$15,000 direct ownership, and an interest in \$11,400.

Q. Roughly, \$17,000?

A. I would say so.

Q. And what figure did you put down for the defendant's interest in the Elite when you testified at the last trial as of December 31, 1945?

(Testimony of Frank T. Andrews.)

A. On a family basis I put down \$43,800.

Q. Do you find the words "family basis" on that chart?

A. That is the way it was computed. [2247]

Q. Now, I will ask you—let's see, I believe you said that these Wai Yuen loans, you accepted the validity of those loans, did you, as shown on exhibit 186?

A. I accepted them as shown in the evidence.

Q. That is the \$11,000 loan to Chan Bat as shown on exhibit 186?

A. My recollection is that it was.

Q. And the \$9,000 as shown to Yee Shew Lung?

A. If that is what it was, why, it is in there.

Q. And the \$7,000 as shown on Chew Dit Tzse?

A. Yes.

Q. And the \$7,000 as shown on Woon Lee, Share Shew Wong and Share Shu Dit, you accepted all of those?

A. Yes, sir.

Q. And you accepted the so-called bonus checks as valid obligations and payments?

A. They were——

Q. (Interposing): **Is that one of your assumptions?**

A. No, that is no assumption of mine. They were receipts and they were properly endorsed.

Q. It is on that basis you put it down?

A. That is the evidence.

Q. You thought those were proper, bona fide transactions, and accordingly you put them in?

A. That is correct. [2248]



(Testimony of Frank T. Andrews.)

Q. What figure did you put down for Wai Lee Liquor as of December 31, 1944? A. \$1,333.40.

Q. And what did you put down at the last trial?

A. On a family basis, \$5,641.56.

Q. You also put down Chan Bow Kay as an asset, did you not, beginning 1945? A. Yes.

Q. And you did that on the testimony—whose testimony?

A. On Chan Dit Chow, and at the direction, I believe, of Mr. Sullivan.

Q. And you eliminate that at the end of the year? A. It was paid in 1945.

Q. Did you include that as cash on hand at the end of the year? A. Cash on hand?

Mr. Fleming: Will you read the question?

A. No evidence on that. I didn't include it.

Q. (By Mr. Fleming): Did you include any cash on hand at the end of the year?

A. No. No evidence.

Q. Your answer is no, you did not?

A. No, I did not.

Mr. Fleming: No further questions.

The Court: We will take the afternoon recess at this time, [2249] counsel, if you have no objection.

Mr. Sullivan: None whatsoever, your Honor.

The Court: Take a recess for a few minutes, ladies and gentlemen.

(Short recess.) [2249A]

(Testimony of Frank T. Andrews.)

Mr. Sullivan: May I proceed?

The Court: Proceed.

### Redirect Examination

By Mr. Sullivan:

Q. Just one or two questions, Mr. Andrews, please.

Counsel for the Government had you read from your present calculations which are introduced in this case and which are Exhibits DD, and DE, a number of figures and then made reference to calculations that you made at the first trial of this case. Do you recall that testimony? A. Yes.

A. Yes.

Q. Just now. And I noticed that in many of your answers you responded by saying that the figure was such and such on a family basis. Do you recall that? A. Yes.

Q. Now, in making the comparable chart, Mr. Andrews, for your testimony in the first trial of this case, was there a different method employed than you employed at this trial?

A. Yes, it was.

Q. Now, can you tell us whether or not in the first trial of the case you included all the assets so far as the evidence disclosed and upon my instructions which were not only the assets of Mr. Chan and his wife but of members of the family?

A. I did.

Q. Now, when you had made calculations of the net worth [2250] based upon the inclusion of those

(Testimony of Frank T. Andrews.)

assets as you say on a family basis, did you then reconcile your taxable net income figure with reported income?

A. With reported income on the returns of the various members of the family.

Q. In other words, in the first trial you took the whole family and you reconciled that net worth with the reported income of all of the family's returns which are in evidence, is that correct?

A. Yes.

Q. Now, did you adopt a different method in making this analysis which you have presented here today?

A. I did because you asked me to exclude the identifiable interests of others than Mr. Chan and his wife.

Q. When you excluded the identifiable interests of the other members of the family did you then compare the resulting figure of taxable net income on a net worth basis with the reported income of the whole family or with the reported income of just Mr. and Mrs. Chan?

A. Just Mr. and Mrs. Chan.

Q. Have you then maintained a consistency in your treatment of the assets and of the income which was produced by the assets in the first trial and a consistency in the second trial?

A. Yes, sir. [2251]

Q. Now, is that what you accountants call conforming the accountancy to the tax practice?

A. It is.

Mr. Sullivan: No further questions.

(Testimony of Frank T. Andrews.)

Mr. Fleming: No questions, your Honor.

The Court: You may be excused.

(Witness excused.)

Mr. Sullivan: Your Honor please, there are just a few exhibits which I would ask leave to address your Honor on now. I offer in evidence Exhibit BS for identification, which would be the worksheets that Mr. Wilkinson testified from.

The Court: They may be admitted.

The Clerk: Defendant's Exhibit BS in evidence.

(Thereupon document previously marked Defendant's Exhibit BS for identification was received in evidence.)

Mr. Sullivan: Exhibit CZ, if your Honor please, I don't find that I had that introduced in evidence, although I had companion exhibits introduced, which were CW, CX and CY. I now offer in evidence Exhibit CZ, which was a sheet of Hogan and Vest rental statements that were used during the cross-examination of the testimony of the witness Wallace.

The Court: They may be received.

The Clerk: Defendant's Exhibit CZ in evidence.

(Thereupon document identified above was received in [2252] evidence and marked Defendant's Exhibit CZ.)

Mr. Sullivan: And a similar statement, which is the statement of Hogan and Vest dated July 12,

1944, Exhibit DA for identification. I now offer it in evidence.

The Court: It may be received.

The Clerk: Defendant's Exhibit DA in evidence.

(Thereupon document previously marked Defendant's Exhibit DA for identification was received in evidence.)

Mr. Sullivan: I offer in Evidence Exhibit DC-2, which was a schedule of summary of income reported by other members of the family which was identified during the course of the cross-examination, testimony of Mr. Brady, and which according to my recollection and in its original preparation prepared upon the information developed from income tax returns in the record.

Mr. Fleming: Was that introduced in the first trial?

Mr. Sullivan: It was.

Mr. Fleming: I have no objection.

The Court: It may be received.

The Clerk: Defendant's Exhibit DC-2 in evidence.

(Thereupon the document identified was received in evidence and marked Defendant's Exhibit DC-2.)

Mr. Sullivan: Defense rests, your Honor.

Mr. Fleming: Government rests, your honor.

Mr. Sullivan: I have certain preliminary motions I [2253] would like to renew, if your Honor please, after your Honor has entertained any sug-



gestion as to the future order of procedure, some of which your Honor has indicated. May I do that if your Honor plans to dismiss the Jury, may I do that after their dismissal?

The Court: Now, ladies and gentlemen, as I have heretofore indicated, I am required to be out of town tomorrow and Wednesday, returning here Wednesday evening. Thursday morning we will proceed with the arguments in the case and the instructions of the Court.

Now, this has been a long case, thirty-four witnesses have taken the stand here and there are voluminous exhibits. It is a case of extreme importance to the Government of equally extreme importance to the defendant. So therefore in discharging you this afternoon I again want to emphasize and to reiterate with all the fervor that I can muster, you are not to discuss this case among yourselves or with anyone else or are you to form or express any opinion about it until it is finally submitted to you.

By the same token I want to indicate to you you are not to indicate by any gesture or movement however slight what your feelings may or may not be in the trial of this case. You will have plenty of time to express your feelings and thoughts in the matter when you have heard the arguments of counsel and the instructions of the Court. [2254]

I want to impress that upon you, the serious character of this case, and congratulate you all upon the serious manner in which you have ap-

proached it, and I urge to continue that attitude until the case is finally submitted to you.

You will now be discharged until Thursday morning at 9:30—Thursday morning at 9:30.

Mr. Sullivan: Pardon me, your Honor. Would it be permissible to ask if your Honor plans to run through until 4:30 Thursday afternoon with the end in view, if it can be accomplished, of getting rid of all of the arguments on both sides?

The Court: Yes, I want to discuss that with you in chambers after the Jury is discharged, but you will plan on running from 9:30 to 4:30 on Thursday.

You may now leave, ladies and gentlemen.

(Whereupon the Jury leaves the courtroom.)

Mr. Fleming: May it please the Court, I have one supplemental instruction prompted by an incident the other day which I would like to submit at this time. The Government's request for instructions, the last number——

The Court: While on that subject matter, gentlemen, I intend to give substantially the same instructions as given by Judge Harris, supplemented, however, by my own stock instructions, so you may have that in mind in preparing your argument. If there are any particular instruction [2255] which you wish to take up we can do that at a later time.

Mr. Sullivan: Yes, your Honor.

At this time, your Honor, we respectfully request leave to submit to your Honor additional requested instructions of the defendant which I have num-

bered 56 through 62. I will hand counsel a copy. Mr. Clerk, will you give this to His Honor?

And I might say to your Honor that some of the instructions included in there are instructions which were not submitted at the last trial of the case, some are.

I have one additional instruction, your Honor, which we are working on which we may or may not submit to your Honor. I was hopeful that your Honor would permit us to submit it on Thursday morning. I found through forgetfulness my secretary follows the observance of holidays in the state courts rather than in the federal courts.

The Court: You may submit it on Thursday.

Mr. Sullivan: Now, may I make the motions, your Honor?

The Court: Yes.

Mr. Sullivan: At this time, if your Honor please, at the conclusion of the case, I respectfully move to strike certain evidence, both oral and documentary, which has been introduced by the Government. And may I be permitted to make the motion in this fashion: that I repeat and reiterate the motion to strike evidence which I filed with your [2256] Honor at the conclusion of the prosecution's case, and I repeat and reiterate the motion which I made orally in connection with one aspect of the testimony without repeating the same and all the details or reiterating the grounds.

The Court: You may do so.

Mr. Sullivan: May that be considered made, your Honor?

The Court: Yes.

Mr. Sullivan: At the conclusion of the entire case, if your Honor please, the defendant in the above-entitled action, Chin Lim Mow, respectfully moves the above-entitled Court for an order dismissing the charge contained in the first count and the charge contained in the second count of the indictment in the above-entitled action and for a judgment of acquittal upon each of the grounds that I have specifically made to your Honor in the motion for judgment of acquittal made at the conclusion of the Government's case, and in respect to each of the specifications of the motions both for the first count and for the second count, which I made at the conclusion of the prosecution case, so as not to burden the record, if your Honor please, may I be permitted make the motion in that fashion without the necessity of reiterating the specifications or the grounds, but with the understanding that I have repeated them by considering the motion as having been repeated in toto the second time at the conclusion of the entire case? [2257]

The Court: That will be the order.

Mr. Sullivan: Thank you, your Honor.

The Court: Your motions will be denied.

Mr. Sullivan: May an exception be noted on the record, your Honor, with respect to your Honor's denying the motion to strike, both made by the filing of a written notice and the oral application?

The Court: I understand you don't need to note an exception, but, however, in the interests of protecting your record it may be made.

Mr. Sullivan: And also to your Honor's order denying the motion for judgment of acquittal made at the conclusion of the entire case.

The Court: Very well.

Mr. Sullivan: Thank you, your Honor.

The Court: May I see you gentlemen in chambers for a minute?

(Thereupon an adjournment was taken to the hour of 9:30 o'clock a.m. Thursday, October 16, 1952.)

#### Certificate of Reporter

(We,) Official Reporter(s) and Official Reporter(s) pro tem, certify that the foregoing transcript of 2258 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ JOSEPH J. SWEENEY,

/s/ KENNETH J. PECK,

/s/ RUSSELL D. NORTON.

Friday, October 17, 1952, at 9:30 A.M.

#### COURT'S INSTRUCTIONS TO THE JURY

The Court: May it be stipulated, counsel, that the jurors are present?

Mr. Fleming: Yes, your Honor.



Mr. Sullivan: Yes, your Honor.

The Court: May it be further understood that the rule which regards to instructions has been complied with?

Mr. Sullivan: Yes, your Honor, except that at this time, if your Honor please, the defense wishes to apprise the Court of its intentions to take certain proceedings under Rule 30 after your Honor has instructed.

The Court: You will be given that opportunity.

Mr. Sullivan: Thank you, your Honor.

The Court: Ladies and gentlemen of the jury, at this time it becomes your solemn duty to assume one of the most important functions of citizenship. This case has been a long and arduous one, as I have previously indicated upon numerous occasions. The attention which you have given to it has been extremely commendable. I don't know of any jury in my experience that paid closer attention to the evidence and has regarded its duties with more fervor than you have, and I commend you for it.

It now becomes the duty of this court to give the instructions to you upon questions of law which should govern you in reaching your decision in this very important case.

You members of the jury are the exclusive judges of all questions of fact which have been presented for you during the course of this long trial. You are also the sole judges of the weight of the evidence and the credibility of the witnesses. But as to the principles of law that are involved, you must, in

obedience to your oath, be governed by the instructions which I am about to give you.

At the very outset I charge you that you must not consider for any purpose any testimony or evidence which has by order of the Court been stricken from the record. Such testimony or evidence should be treated by you as though you had never heard nor seen it.

Now, you will distinctly understand that in this charge which I am about to give you the Court is in no manner or form expressing, nor does it desire to express any opinion upon the weight of the evidence or any part thereof; nor does the Court express any opinion as to the truth or falsity of the testimony of any witness.

I might say in passing that it is my province if I choose to do so to comment upon the evidence, leaving to you, of course, the ultimate decision. But I do not choose to exercise that privilege. So you will distinctly understand [2\*] that I am not in any manner or form expressing any opinion that any alleged fact in this case is or is not proven. With the questions of fact, the weight of the evidence, the credit that you should give to any witnesses sworn in the case, the Court has nothing to do. In other words, I do not express any opinion upon them. These are matters which are entirely within your province and which you, as jurors under your oaths, must determine for yourselves.

My duty is simply to announce to you which general principles of law apply to this case, based upon the testimony that you have heard, in as a

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

concise a manner as is consistent with my duties and with the importance of the issues which are involved here.

So, therefore, if in stating any proposition of law to you I have assumed or I will have assumed any fact as proven, you are to disregard any such assumption and draw your own conclusions from the evidence. That is to say, again, that you and you alone are exclusive judges of the facts in this case. So therefore, if I as the Judge of this Court have at any time during this trial used any language, or if I have seemed to you to indicate the opinion of the Judge as to any question of fact or as to the credibility of any witness, you must not be influenced thereby, but you must determine for yourselves all questions of fact without regard to the opinion of anyone else. [3]

I charge you that you are not to use in the consideration or determination of any facts in this case any reference to or comment by Court which I may have made during the course of this case in connection with the admission of testimony or otherwise. The determination of the facts of this case is solely within your province, and you are not to be assisted or influenced in any way by anything which the Court may have said or done in that behalf, except as to matters of law which are applicable thereto.

It has been your duty to listen patiently which you have done, to all of the evidence in this case and to the arguments of counsel. Now, while it was

your duty to listen to and to consider the arguments of counsel, I instruct you that the arguments of counsel are not evidence, and that the only legitimate purpose of argument is to assist you in arriving at a proper verdict from the evidence in the case, applying to such evidence the law as given you by the Court.

The defendant in this case is accused by the Grand Jury for this district as follows, and in order that the indictment may be familiar to your minds I shall read it. It is very brief:

“That on or about the 15th day of March, 1946, in the Northern District of California, Southern Division, Chin Lim Mow, late of Oakland, California, did wilfully and knowingly attempt to defeat and evade a large part of the income tax [4] due and owing by him to the United States of America for the calendar year 1945, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of California, at San Francisco, California, a false and fraudulent income tax return wherein he stated that his net income for that calendar year, computed on the community-property basis, was the sum of \$27,170.83 and that the amount of tax due and owing thereon was the sum of \$11,646.03, whereas, as he then and there well knew, his net income for the said calendar year, computed on the community-property basis, was the sum of \$110,279.96, upon which said net income he owed to the United States of America an income tax of \$78,629.55.



“In violation of Section 145 (b), Internal Revenue Code; 26 USC, Section 145 (b).”

The Grand Jury in the second count further charges:

“That on or about the 15th day of March, 1946, in the Northern District of California, Southern Division, Chin Lim Mow, late of Oakland, California, who during the calendar year 1945 was married to Chin Wong Shee, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by the said Chin Wong Shee to the United States of America for the calendar year 1945, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of [5] California, at San Francisco, California, a false and fraudulent income tax return for and on behalf of the said Chin Wong Shee, in which it was stated that her net income for said calendar year, computed on the community-property basis, was the sum of \$27,170.83 and that the amount of tax due and owing thereon was the sum of \$11,646.03, whereas, as he then and there well knew, her net income for the said calendar year, computed on the community-property basis, was the sum of \$110,279.96, upon which said net income there was owing to the United States of America an income tax of \$78,629.55.

“In violation of Section 145 (b), Internal Revenue Code; 26 USC, Section 145 (b).”

That is signed by the duly appointed Foreman of the Grand Jury.



Now, upon his arraignment on this charge the defendant pleaded not guilty, and by so doing he put in issue every material allegation contained in the indictment which I have just read to you.

Now, I instruct you, ladies and gentlemen, that within his option the defendant has the right, under the law, to be sworn as a witness in his own behalf and testify, if he so chooses, or not as he may be so advised; and, therefore, as a matter of law, you, as jurors, are not entitled to draw any inferences whatsoever against the defendant because he exercised this privilege, which is accorded to him under the law, of standing [6] upon the case made against him by the Government, without being sworn and without testifying upon his own behalf.

I instruct you that you are to determine the guilt or innocence of the defendant solely from the evidence which has been adduced here on the witness stand and admitted in evidence by the Court. If you have read any account containing alleged statement of the facts involved in this case, you are to dismiss that from your mind and disregard it. You are not to base your verdict upon the expression or expressions contained in any newspaper. You are to decide this case entirely upon what you have heard in this courtroom, and not otherwise.

The laws of the United States do not require that a taxpayer in keeping his books and records adopt any particular method or system of accounting. A taxpayer may adopt any system or method of book-keeping or accounting so long as he believes it will properly reflect his income.

The law does not require that a taxpayer himself prepare his income tax return. A taxpayer may employ an accountant or other person skilled or versed in the preparation of income tax returns to prepare the taxpayer's income tax return.

With respect to each count of the indictment, it is not sufficient for the Government, in order to establish the guilt of the defendant merely to prove that the return mentioned in said count of the indictment understated the income for the year in question or the amount of tax due [7] thereon. The defendant in this case is not on trial for filing a return that understated his income or the income of his wife, or the tax due on either his income or his wife's income. The Government must prove to a moral certainty and beyond a reasonable doubt, in addition to the fact that such return of the defendant or his wife understated the income for the year involved, that such return containing an understatement of said income was filed knowingly and wilfully by the defendant Chin Lim Mow with knowledge on the part of the defendant Chin Lim Mow that such return did not correctly set forth all said income, and that said defendant Chin Lim Mow filed the same with the intent on his part to defraud the United States out of the amount of tax that would be imposed on such additional income.

In order to prove the guilt of the defendant under each count of the indictment on file in this case, the Government of the United States must establish by the evidence in the case and to a moral

certainty and beyond a reasonable doubt, each of the following matters and things:

1. That the defendant filed or caused to be filed the income tax return set forth in said count of the indictment;

2. That said income tax return was false in that it did not correctly set forth all of the taxable income for the year in question;

3. That the defendant Chin Lim Mow knew that said income tax return was false and did not set forth all of the [8] taxable income for the year in question;

4. That the defendant Chin Lim Mow filed or caused said income tax return to be filed with the specific intent on his part to evade the payment of income tax to the United States and to defraud the United States out of such additional income tax as would have been due had the full income for such year been reported in said income tax return;

5. That there was due to the United States for the year in question, income tax over and above that reported or paid for the year in question.

Now, if the Government fails to prove any one of the foregoing five essential elements of the offense for which the defendant is on trial, to a moral certainty and beyond a reasonable doubt—again I say I shall subsequently define that for you—you must return a verdict finding the defendant Chin Lim Mow not guilty on such count of the indictment.

One of the essential elements of the offense for which the defendant is on trial is that there was due and unpaid from the defendant and from the wife of the defendant to the United States, for the calendar year 1945, a tax over and above the tax paid by the defendant and his wife, respectively, to the United States for that year. That such additional tax was due and unpaid from the defendant and his wife, respectively, to the United States must be established in this trial by the [9] United States to a moral certainty and beyond a reasonable doubt, and if such facts are not proved beyond a reasonable doubt you must acquit the defendant, even though you should find that the income tax returns so filed by the defendant for said year were not true and correct. The crime charged in the indictment is that the defendant attempted to defeat or evade a tax due by him and his wife to the United States. If there was no tax due from the defendant or his wife over and above the amount of tax reported in their respective income tax returns, then he cannot be guilty of either of the offenses charged in the indictment.

The defendant Chin Lim Mow is only on trial in this action for the offenses set forth in counts one and two of the indictment. The offense as charged in count one is that on or about the 15th day of March, 1946, the defendant did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States for the calendar year 1945 by filing and causing to be filed with the Collector of Internal Reve-



nue a false and fraudulent income tax return, wherein he understated his income for said year and understated the amount of tax due for said year to the Government.

The offense as charged in count two is that on or about the 15th day of March, 1946, the defendant Chin Lim Mow did wilfully and knowingly attempt to defeat and evade a large part of the [10] income tax due and owing by Chin Wong Shee, the wife of the defendant, to the United States for the calendar year 1945 by filing and causing to be filed with the Collector of Internal Revenue a false and fraudulent income tax return for and on behalf of said Chin Wong Shee, wherein the income of Chin Wong Shee for said year and the amount of tax due thereon to the Government were understated.

The defendant is not on trial for having committed any other offense, and you cannot find the defendant guilty at this trial merely because the evidence may disclose that at some other time the defendant may have violated an internal revenue law of the United States.

We have heard a great deal about net worth during the trial of this case. The net worth-expenditures method of establishing net income, sought to be applied in this case, is effective only if the computations of net worth at the beginning and at the end of the questioned periods, can reasonably be accepted as accurate.

The prosecution has introduced evidence which, it is claimed, tends to show the commission by the



defendant of other acts similar to those charged in the indictment. You are again instructed, however, that the defendant is not on trial for any acts or offenses other than those specifically charged in the indictment.

This evidence of similar acts has been admitted for [11] whatever bearing it may have upon the defendant's state of mind in connection of the acts charged in the indictment; in other words, such evidence may be considered by you in determining whether the defendant had a guilty intent or knowledge in reference to the charges made in the indictment. Such evidence of similar acts may not be considered by you for any other purpose in this case. You are further instructed that proof of similar acts—that is, acts similar to those with which the defendant is here charged—must be established by evidence which is plain, clear, and conclusive.

Now, evidence has been introduced in this case as to verbal statements and admissions claimed to have been made by the defendant. Such testimony is to be received by you with caution.

Testimony of Government witnesses should be weighed and scrutinized in the same manner as any other witness who has testified in this case, and the same rules for the determination of credibility apply.

To establish its case the Government must prove, first, that income tax was due and owing by the defendant in addition to that declared in his original income tax return; and, second, that the defendant wilfully attempted to evade and defeat such tax.

You must be convinced that both a tax was due and owing in addition to that declared on his return, and that the defendant [12] wilfully attempted to evade and defeat such tax.

The possession of money alone is not sufficient to establish net taxable income. That evidence of the possession of money and the expenditure of money may be considered as part of a chain of circumstances which you may consider in arriving at a conclusion as to whether or not the defendant enjoyed taxable income.

You are instructed that when in a trial on charges of income tax evasion discrepancies between the defendant's returns and his actual income are indicated by the Government's proof, the failure of the defendant to offer explanation in any form may be considered by you in arriving at your verdict.

If you find that the defendant, Chin Lim Mow, had substantial taxable income for the year 1945 which he did not report in his income tax return, then you will find that there was a substantial amount of additional tax due to the United States Government for that year by the defendant. The same principle applies to the count involving Chin Wong Shee's taxes. Again, that is the wife of the defendant.

If you find that there were any gains, profits or income received by the defendant which were not reported, it makes no difference as far as the question of taxability is concerned whether such income was lawfully received or unlawfully received, inasmuch as both were taxable.

If the defendant intentionally handled his income so as [13] to avoid making an accurate return of such income and then filed a return which, to his knowledge, substantially understated his income, and the tax-evasion motive played any part in such conduct, the offense charged may be made out even though such conduct may also have served other purposes, such as concealment of other crime or crimes.

The duty to file the return is personal, and it cannot be delegated. Bona fide mistakes should not be treated as false and fraudulent, but no man who is able to read and write and who signs a tax return is able to escape the responsibility of at least good faith and ordinary diligence as to the correctness of the statement which he files, whether prepared by him or prepared by somebody else.

I instruct you that it is not necessary for the Government to offer direct proof of wilfulness.

It is a rare case in which the defendant has said to a witness that he did certain acts with the purpose of evading his tax liabilities.

In making your decision, therefore, as to whether or not the acts tending to conceal the defendant's true tax liability were wilful, you may consider all of the circumstances of the case. You may infer wilfulness from the kind of evasion, if any, which you find defendant committed, from his opportunity to know the true amount of his net income, and from such other facts which point to the existence or nonexistence of the [14] criminal state of mind in the defendant.

You are instructed, ladies and gentlemen of the jury, that a man may not shut his eyes to obvious facts and say he does not know. He may not close his observations and knowledge to things that are put out in the open and are obvious to him, and say, "I have no knowledge of those facts." He can't do that. He must exercise such intelligence as he has, and, if the evidence shows that he intended to conceal tax liabilities from the Government, then of course he was not acting in good faith. This question of intent is a question you must determine for yourselves from a consideration of all the evidence that has been presented before you in the trial of this case.

Now the gist of the offense charged in the indictment is wilful intent on the part of the taxpayer to evade or defeat the tax imposed by the income tax law. The word "attempt," as used in this law, involves two elements:

First, an intent to evade or defeat the tax; and, second, some act done in furtherance of such intent. The word "attempt" contemplates that the defendant had knowledge and understanding that during the calendar year 1944 he had an income which was taxable and which he was required by law to report, and that he attempted to evade or defeat the tax thereon, or a portion thereof, by purposely failing to report all the income which he knew he had during such calendar year and which he knew it [15] was his duty to state in his return for such year.

There are various schemes and subterfuges and devices that may be resorted to to evade or defeat



the tax. The one alleged in this indictment is that of filing a false and fraudulent return with the intent to defeat the tax or liability.

The attempt to evade and defeat the tax must be a wilful attempt, that is to say, it must be made with the intent to keep from the Government a tax imposed by the income tax laws which it was the duty of the defendant to pay to the Government. The attempt must be wilful, that is, intentionally done with the intent that the Government should be defrauded of the income tax due from the defendant. The presumption is that a person intends the natural consequences of his acts, and the natural presumption would be if a person consciously, knowingly, or intentionally did not set up his income and therefore the Government was cheated or defrauded of taxes, that he intended to defeat the tax.

The indictment in this case charges a violation of Section 145 (b) of Title 26, United States Code, which so far as it applies here reads: “\* \* \* any person who wilfully attempts in any manner to evade or defeat any tax imposed by this chapter shall be guilty of an offense.”

The jury may regard any act or statement of a person charged with crime tending to show consciousness of guilt to [16] be considered together with other evidence in the case. This applies to false statements, if any made, by the accused in attempting to explain proven facts.

While the accused at the beginning of a trial is presumed to be innocent, yet if the proof establishes



his guilt beyond a reasonable doubt, then the presumption of innocence disappears completely.

The person who commits a crime through the agency of another with whom he has arranged for assistance in the commission of the crime, is as guilty in the eyes of the law as if he had committed the crime himself personally without the assistance of any kind.

The Government is not required to prove guilt to a mathematical certainty, nor is the Government required to establish the exact amount of unreported income.

That is to say, evidence of a source of unreported income in 1940-1944 and a scheme of conduct resulting in such income in 1940-1944 may be considered by you in determining whether or not the defendant used a similar scheme and plan and whether or not defendant had a similar source of unreported income in 1945; and evidence tending to show a wilful intent to conceal taxable income in 1940-1944 may be considered by you in determining the question of whether or not defendant has a wilful intent to conceal taxable income during 1945.

Now, the defendant herein is charged with wilfully [17] attempting to evade income taxes for the year 1945 by filing a false return. Certain evidence has been admitted relating to events which occurred in other years. Now, this evidence has been admitted under the rule that acts similar to those charged in the indictment can be proved to show intent when they are sufficiently near and so related

in kind as to throw light on the question of intent and are closely related and of the same general nature as the transactions out of which the alleged criminal act arose. Evidence of such facts and circumstances, both prior and subsequent, are admissible if not too remote in time.

Evidence has been admitted in the trial of this case as to the practice of gambling during the year 1945 on the premises controlled by defendant, and evidence has been admitted that the defendant received income from the practice of gambling during 1945 on which he paid no tax.

Such evidence, if believed, may be considered by you only for the limited purposes of showing that defendant had a source of income from an illegal business which he concealed from the tax authorities. It may be considered by you to show that the defendant had a plan or scheme of operation in prior years resulting in income to the defendant continuing over to and similar to that used in 1945, and to show the intent of the defendant to defraud the Government of income taxes during the year 1945. [18]

Now, in weighing the evidence in this case you are entitled to consider, among other things, the fact, if you find it to be a fact, that one or both of the parties have not called available witnesses, having knowledge of facts material to the issues in this case. And I charge you that in weighing the failure to produce any such evidence, the strength of the inference to be drawn against a party not

producing evidence depends on the circumstances of the particular situation.

For example, you may consider the probability that under ordinary circumstances a relative or employee of a party is likely to be biased in favor of the party to whom he is related or by whom he is employed.

If, under such circumstances, a relative or employee of a party is not called as a witness when it would have been normal to do so, you would be warranted in drawing the conclusion that the testimony of such witness would not be favorable to the party calling him.

The Government is required to prove its case beyond a reasonable doubt. But the requirement of proof beyond a reasonable doubt is a direction to the jury, not a rule of evidence; it operates on the whole case, and not on separate bits of evidence each of which need not be so proven.

In considering whether the Government has established a case for conviction, the evidence taken as a whole must convince you beyond a reasonable doubt—again I say as I [19] shall define reasonable doubt to you subsequently—beyond a reasonable doubt of the defendant's guilt.

In connection with the alleged specific instances of fraud, one of the matters to be determined by you is the validity of certain so-called bonus arrangements with employees of the Wai Yuen Club, which club was owned and operated by the defendant. If you should find as a fact that the above bonus

checks were not paid as wages but were delivered to the employees involved with the understanding that the amounts involved would be returned to the defendant for his use, you may consider this evidence in reaching your decision as to whether or not the defendant is guilty of the offenses charged in this indictment.

Considerable evidence has been presented during the conduct of this trial concerning the bona fides or good faith of certain 1945 partnership income tax returns in which the defendant was shown as a partner. One of the issues to be determined by you is whether or not the defendant filed, or caused to be filed, these particular partnership returns, or any of them, for the purpose of defrauding the Government of income taxes by reporting income in lower brackets than would have applied if the defendant and his wife had reported all the income reported by the partnerships in question. In determining this matter, you are at liberty to consider and weigh all the testimony in the record bearing on this issue. [20]

Every person, except wage earners and farmers, liable to pay income tax is required to keep such permanent books of account and records as are sufficient to establish the amount of his gross income, and the deductions, credits and other matters required to be shown in any income tax return.

The word "wilful" when used in a criminal statute generally means an act done with a bad purpose; without justifiable excuse; or stubbornly, obstinately,



perversely. The word is also employed to characterize a thing done without ground for believing it is lawful, or conduct marked by a careless disregard whether one has the right so to act.

The law provides that if the method of accounting employed by a taxpayer does not clearly reflect his income, income shall be computed in accordance with such method as, in the opinion of the Commissioner of Internal Revenue, clearly reflects the taxpayer's income. Where a taxpayer's records are inadequate or inaccurate in substantial respects, the courts have recognized that it is proper to determine taxable income by the net worth and expenditures method.

The Government does not have to prove the exact amounts of unreported income.

In offering proof that the defendant attempted to evade and defeat payment of income taxes by filing fraudulent returns, the Government is not limited to a single mode or method of proof. In the present case, the Government has sought [21] to show that defendant fraudulently caused part of his income and part of his wife's income to be reported in the names of other persons in order to get in a lower tax bracket and thus pay less tax in the year 1945 than was due. The Government has also sought to show by the net worth and expenditures method that the defendant fraudulently understated his net income and that of his wife for the year 1945. It is for you to determine whether the Government has proved fraud. But, for the Government to prevail on this issue, it is not necessary that it establish fraud by both methods. It is sufficient to establish



that part of the Government's case, if you find that it has proved fraud by either method.

Now, there have been introduced in evidence in this case certain sworn statements and affidavits of persons having knowledge of the facts to which they made oath. I charge you that either the Government or the defendant is entitled to rely on a sworn statement or affidavit given for a serious purpose, unless there is reason for you to discredit such sworn statement or affidavit.

Now, you have heard expert testimony relating to the issues involved in this case. I charge you that the computations made by an expert are for the convenience of both sides in presenting the case for your consideration. You are not bound by the computations or summaries or other testimony of an expert witness, but you should give such testimony the weight [22] to which you determine it is entitled in the light of the other proof in the case, and also with reference to your conclusions as to whether or not the facts on which the particular expert's testimony was based have been established by the necessary degree of proof. And of course you may reject all of such expert testimony, if, in your opinion, the reasons which are given for it are unsound.

The Government of course must establish the guilt of the defendant beyond a reasonable doubt. Proof of guilt should exclude every reasonable hypothesis of innocence, but need not go beyond that point. That is to say, the Government thus proves its case

beyond a reasonable doubt, but the Government is not required to exclude every possible hypothesis of innocence.

Now, in every crime, ladies and gentlemen of the jury, there must exist a union or a joint operation or act and intent, or what we lawyers call criminal negligence. The intent or intention is manifest by the circumstances connected with the offense charged and the sound mind and discretion of the accused person. And all persons are considered to be of sound mind who are neither idiots nor lunatics or otherwise affected with insanity.

In every criminal proceeding, under our system of criminal jurisprudence, the defendant is presumed to be innocent until the contrary is proven; and in the case of a reasonable doubt [23] whether his guilt is satisfactorily shown, he is entitled to an acquittal. Presumption of innocence attaches at every stage of the case, to every fact essential to a conviction.

Reasonable doubt, ladies and gentlemen, is that state of the case, which, after an entire comparison and consideration of all of the evidence, leaves your minds in that condition that you cannot say that you feel an abiding conviction to a moral certainty to the truth of the charge.

The law, however, does not require demonstration, that is, such a degree of proof as, excluding the possibility of error, produces absolute certainty, because such form of proof is rarely possible. Moral certainty only is required or, in other words, that

degree of proof which produces conviction in an unprejudiced mind.

By "reasonable doubt," therefore, is not meant every possible or fanciful conjecture that may be imagined by you or surmised by you or suggested to you. The rule is not there must be an acquittal in all cases of possible doubt, because everything relating to human affairs and depending upon moral evidence may be open to some possible or imaginary doubt.

You ladies and gentlemen, if I have heretofore told you, are the exclusive judges of the weight of the evidence herein and the credibility of the witnesses. A solemn duty is imposed upon you—one of the most solemn duties as I indicated heretofore, of your citizenship. It is for you alone to [24] judge the credibility of the witnesses, the weight to be given the evidence offered, and its effect and its conclusiveness to establish that fact for which it has been offered.

Now, in so doing you may consider the conduct, the appearance and demeanor of the witness upon the stand, the consistency or inconsistency, the reasonableness or unreasonableness, and the probability or improbability of any statement made by any witness. You have a right, also, to consider the interest that a witness may have in the result of this trial; and from these, and such questions as may have occurred to you on the evidence presented to you, you will arrive at your conclusion as to the weight, the effect and the sufficiency of the testimony offered.

Every witness is presumed to speak the truth. This presumption may be repelled by the manner in which the witness gives his or her testimony, by the character of the testimony offered, and by the motives which may actuate a witness in coming here to give his or her testimony.

Any witness found by you to be wilfully false in a material part of his or her testimony is to be distrusted by you in other parts.

Now, your power of judging of the effect of evidence is not an arbitrary power, but is to be exercised with legal discretion and in subordination to the rules of evidence. When I say it isn't an arbitrary power I mean this; that you [25] must exercise it with reasonable discretion.

The Judge and jury form a sort of a team. I pass upon the law, you people upon the questions of fact. We work together. You are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number or against a presumption of law or other evidence satisfy your minds. In other words, it isn't the greatest number of witnesses that should control you where their testimony is not satisfactory to your minds against a less number whose testimony does satisfy your minds and produces a moral conviction that they are telling the truth. To put it another way, it is upon the quality of the testimony rather than the quantity or number of witnesses that you should act, provided it produces in your minds this moral conviction that satisfies you of its truthfulness.



You are the sole and exclusive judges of the credibility of the witnesses who have testified in this case. The conduct of the witnesses, their character as shown by the evidence, and their manner on the stand and relation to the parties may be taken into consideration for the purpose of determining their credibility and as to whether they have spoken the truth or not. And you may scrutinize not only the manner of the witnesses on the stand, their relation to the case, if any, but also their degree of intelligence, their bias or prejudice, if any, the reasonableness or unreasonableness of their [26] statements, and the strength or weakness of their reasons.

Under your oaths as jurors you are to take into consideration only such evidence as has been admitted by the Court, and you must, in obedience to your oaths, disregard and discard from your minds every impression or idea suggested by questions asked by counsel which were objected to and to which objections were sustained by the Court. The defendant is to be tried only on the evidence which is before the jury, and not upon suspicions that may have been excited by questions of counsel, and answers to which were not permitted.

The direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact in a case of this character.

Now, I want to instruct you upon the question of circumstantial evidence. There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find



an accused person guilty of crime. One is direct or positive evidence of an eye witness to the commission of the crime, and the other is proof of testimony of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant, and that is known as circumstantial evidence. Such evidence may consist of admissions by the defendant, plans laid for the commission of the crime, such as being himself in a position to commit it, or by any acts, declarations or circumstances [27] admitted in evidence tending to connect the defendant with the commission of the crime.

In order to convict, circumstances must be such as to produce the same certainty as direct evidence. There is nothing in the nature of circumstantial evidence which renders it any less reliable than any other class of evidence. Provided it produces in the minds of the jury a conclusion of the defendant's guilt beyond a reasonable doubt, it is sufficient. So, therefore, if upon a consideration of the entire cause or case you are satisfied to a moral certainty and beyond a reasonable doubt of the guilt of a defendant, you should so find, irrespective of whether such certainty has been produced by direct evidence or by circumstantial evidence, because the law makes no distinction between circumstantial evidence and direct evidence in the degree of proof required for conviction, but only requires that the jury shall be satisfied beyond a reasonable doubt, by evidence of either the one character or the other, or both. In cases of circumstantial evidence circumstances should be proven which are not only con-

sistent with the guilt of the defendant, but inconsistent with any other reasonable hypothesis of innocence.

Now, ladies and gentlemen, you have been here many days for the purpose of trying the issues of fact that are presented by the allegations contained in the indictment filed by the grand jury, and the defendant's plea was not [28] guilty to that indictment. This is a duty that you should perform uninfluenced by pity for the defendant or by passion or prejudice on account of his race or the nature of the charge against him. You should not allow the question of punishment of the defendant to enter into your consideration. That is my business, my own exclusively. I will take care of that. You are to be governed, therefore, solely by the evidence introduced in this trial and the law as I have given it to you. [29]

The law will not permit jurors to be governed by mere sentiment, conjectures, sympathy, passion or prejudice. Sympathy is a very commendable quality in the human family, but it has absolutely no place in the jury box. A verdict founded upon sentiments or pity for the accused, or upon public opinion or public feeling, or upon conjecture or suspicions or rumors, or any factors of that character, would be a false verdict. You will not take counsel of it in deliberating upon your verdict. The importance of your duty requires that you consider the right of the Government to have the laws properly executed, and it is with you citizens selected

from this district there finally rests the duty of determining the guilt or innocence of those accused of crime, and unless you do your duty the laws might just as well be stricken from the statute books.

You should also ever keep in mind the importance to the accused of the result of your deliberations, and be just to him as well as to the Government. Both the Government and the defendant have a right to demand, and they do demand and expect that you will carefully and dispassionately weigh and consider the evidence and the law of the case and give to each your conscientious judgment, and that you will reach a verdict; and we contemplate that you will reach a verdict that will be just to both sides, regardless of what the consequences may be to anyone concerned. [30]

In this case, ladies and gentlemen of the jury, if upon a review and consideration of all the evidence before you you should be satisfied beyond a reasonable doubt that the defendant here is guilty, you will so declare by returning a verdict finding him guilty as charged. If you are not satisfied of his guilt beyond a reasonable doubt, you should unhesitatingly return a verdict finding him not guilty.

Now, counsel, I am about to conclude my instructions. Is there anything you wish to take up with the Court prior to that? If so, I will excuse the jury.

Mr. Sullivan: Yes, this, your Honor: there are the usual proceedings for the defense under Rule

30, and we would respectfully invite your Honor's attention to that.

The Court: I will excuse you, ladies and gentlemen, for a few minutes while I take up certain matters with counsel. Remember that you are not to discuss the case among yourselves as the case has not yet finally been submitted to you. You will reserve judgment until I have concluded my instructions. We will be just a few minutes. You will retire to the jury room.

(Thereupon the jury retired from the Court-room, and the following proceedings were had outside the presence of the jury.)

The Court: You may proceed.

Mr. Sullivan: May it please your Honor, pursuant to [31] Rule 30 of the Federal Rules of Criminal Procedure, and to all applicable rules of Federal Procedure and all applicable statutes, the defendant at this time respectfully enters certain exceptions and objections to the charge of your Honor to the jury, and to the omissions of requested charges of your Honor to the ladies and gentlemen of the jury, that is, the requests made by the defendant.

The defendant objects and excepts to the Court's charge to the jury in accordance with the following instructions requested by the Government: 3, 4, 5, 6, 8, 9, 10, 11, 12, 16, 17, 20, 25, 26, 27, 28, 29, 42, 44, 46, 47, 48, 49, 50, 51, 52, 53, and 54.

As part of said objections and exceptions, and as ground therefor, the defendant, if your Honor

please, without in any way limiting our specifications to those hereafter stated, further specifies as follows:

1. With respect to Instruction No. 4, the second sentence thereof is not a correct statement of law and is not supported by legal authorities, and the instruction does not specify the chain of circumstances referred to therein.

2. With respect to Instruction No. 5, that such instruction omits language from the case noted in support thereof to the effect that the burden of proof in the criminal case is always on the Government and never shifts. Furthermore, the giving of such instruction in its present form would permit [32] the jury to draw an unfavorable inference from the defendant's failure to testify in the case at bar. Furthermore, the Bell case, relied upon by the Government in this instruction, does not support the proposition as stated in the instruction, but refers only to situations where the defendant has taken the stand in his own defense and failed to explain, or has failed to explain, discrepancies in statements made before trial.

3. With respect to Instruction No. 6, said instruction is ambiguous and uncertain in that it does not identify the character of the income referred to, that is, whether net income or gross income.

4. With respect to Instruction No. 10, said instruction sets up an improper standard of conduct, namely, a standard of "good faith and ordinary



diligence" as the "responsibility" of every person who can read and write. Failure to conform to such standard does not necessarily constitute a crime.

5. With respect to Instruction No. 11, said instruction does not correctly state the law, and considered with other general instructions on intent, is ambiguous and confusing. It does not take into account the "reasonable hypothesis plan" and the requirement that the jurors accept that hypothesis which is consistent with innocence rather than that which is consistent with guilt.

6. With respect to Instruction No. 12, said instruction [33] does not accurately set forth the applicable law and is not supported in its form by the citation noted. It can be construed as setting up a test of whether the defendant was acting in good faith instead of the test of criminal intent.

7. With respect to Instructions Nos. 20, 21 and 25, upon the grounds that there is no basis for the giving of these instructions, that is, no ground in the evidence in the record.

8. With respect to Instruction No. 27, that such instruction does not accurately set forth the law and is not applicable to the evidence in this case.

9. With respect to Instruction No. 29, the first paragraph of said instruction is not based upon the evidence in the record, and the second paragraph of said instruction is not logically related to or connected with the first paragraph. Furthermore, such

instruction is generally ambiguous and confusing and does not accurately set forth the law.

10. With respect to Instruction No. 42, upon the grounds that it does not correctly state the law. Furthermore, the probability does not exist under ordinary circumstances that a relative or employee is likely to be biased as stated in the instruction.

11. With respect to Instructions 43, 44 and 45, upon the grounds that they do not correctly state the law. Such instructions could be construed by the jury to mean that they do not absolutely have to hold the government to a burden of [34] proof to a moral certainty and beyond a reasonable doubt, and that it is within their discretion to relax this legal requirement.

12. With respect to Instruction No. 46, upon the grounds that it is not applicable to the evidence in the case, that it disregards evidence in the case, and that it treats only some but not all of the factors of evidence in the particular subject matter of the instruction.

13. With respect to Instruction No. 47, upon the grounds that it does not correctly state the law applicable to the various partnership returns of income involved in this case at the time that they were filed. The instruction does not set up the proper criteria which determines whether such partnerships were valid for income tax purposes or not.

14. With respect to Instruction No. 49, upon the

ground that the last sentence of said instruction does not accurately state the law.

15. With respect to Instruction No. 50, such instruction does not set forth the recognized criteria for net worth cases as contained in the statutory and decisional law. In view of this the last paragraph is misleading and ambiguous and the last sentence of the instruction is not an instruction on a subject of law, but is an instruction upon a question of fact, an assumption of fact, and generally improper and prejudicial. [35]

16. With respect to Instruction No. 51, upon the grounds that said instruction does not accurately state the law, that it is not supported by the citation noted, that there is no basis for the concepts of the methods of proof indicated, and that the instruction is generally confusing and ambiguous.

17. With respect to Instruction No. 52, such instruction does not accurately state the law, instructs on a question of fact, does not accurately state the principle of admissions against interest as a principle of the law of evidence.

18. With respect to Instruction No. 53, upon the grounds that it does not accurately state the law with respect to expert witnesses.

19. With respect to Instruction No. 54, upon the grounds that it does not accurately state the reasonable hypothesis doctrine, is misleading to the jury, and would be subject to interpretations at variance with the general instructions given by the Court.

20. With respect to Instruction No. 56, upon the grounds that it is not applicable to the evidence, that it does not accurately state the law, and that it is confusing and ambiguous.

With respect to all other instructions excepted and objected to, and for which no separate specification has been made as I have done, the defendant further specifies that such instructions, when read together with other instructions [36] proposed to be given, and given, as requested by the Government and given by the Court, as the so-called stock instructions, do not accurately and correctly state the law in all instances, and in instances when so read are confusing and ambiguous.

The defendant very respectfully states that in making the foregoing specifications the defense makes them without waiving any other ground of objection that—

The Court: That you haven't thought of.

Mr. Sullivan: Yes, your Honor.

The Court: All right, the record will show that.

Mr. Sullivan: And furthermore, if your Honor please, the defendant respectfully objects to an instruction which I can't identify except in its substantial matter, which apparently was an instruction of the Court's own selection and not proposed by either counsel, to the effect that it is the law that the defendant on his own volition, as I remember your Honor's words, may testify and take the stand, or he may decide not to, standing upon the case as made against him by the Government. I respectfully except to the giving of that instruction.

The Court: I think you proposed it.

Mr. Sullivan: If I did, your Honor——

The Court: I will thumb through them, but I didn't give it upon my own volition, I know that. Those were proposed by you or Mr. Fleming, and I was inclined to believe it was [37] proposed by you.

Mr. Sullivan: Then, your Honor, it is a situation in which——

The Court (Interposing): Do you recall, Mr. Fleming, if you proposed such an instruction?

Mr. Fleming: I think I proposed a standard instruction in the form of the weight of the testimony—failure to testify.

The Court: I recall very well giving the instruction.

Mr. Sullivan: If it hasn't been given by your Honor as a stock instruction it is covered by my other objections, your Honor, and I won't further specify.

The Court: Very well.

Mr. Sullivan: I further except to what apparently was a stock instruction of your Honor and not proposed by either counsel upon the subject of circumstantial evidence, which in substance instructed the jury that such a type of evidence was of equal lignity with the evidence which is direct evidence; and, further, instructed the jury that upon that evidence they could form a conclusion as to the defendant's guilt.

I make the exception upon the ground that the instruction was not balanced, and that the jury should be instructed or advised that they could,



upon such evidence, also reach a conclusion of the defendant's innocence as well as his guilt, [38] upon that character of evidence.

The Court: I don't know how you can have any exception to that. It has been a law recognized in both State and Federal Courts for many years. But you may have your objection.

Mr. Sullivan: With respect to the defense instructions, now, if your Honor please, the defendant now objects and excepts to the Court's failure and omission to charge the jury in accordance with each and all of the instructions requested by the defendant, including the additional instructions requested at the conclusion of the evidence, save and except the following instructions which were included in the Court's charge to the jury: Nos. 34, 35, 36, 39, 42, 43, 52, 57, 58, 59.

With respect to the aforementioned omissions from the charge to the jury hereinabove excepted and objected to, the defendant as a part of said objections and exceptions, and as grounds therefor, further specifies:

1. With respect to each of the requested instructions numbered 33 through 59, which have been omitted from the charge to the jury, the defendant specifies that each of them clearly state the law; that each of them is necessary in order to fully, accurately and properly advise the jury of the matters and principles of law involved in this case; and that the omission of any one of them will result in the situation where the jury is not fully advised of the applicable legal principles. [39]

2. With respect to requested instructions Nos. 44 through 55, the additional specification is made that the omission from the charge to the jury of each of said instructions leave the jury without a full, clear or accurate instruction upon the legal principles pertaining to the so-called net worth expenditures method of computing income.

The jury cannot rely upon the testimony of witnesses for an explanation of the legal criteria on this subject, and cannot resort to the testimony of accountants for the standards of law. Net worth expenditures evidence is circumstantial evidence, and the jury must be instructed upon the pertinent legal principles so that such instruction can be coordinated with the general instructions on circumstantial evidence.

The jury must be instructed on the type and quantum of proof required by the net worth expenditures method under the law, so that it can apply such principles in following the Court's charge on the reasonable hypothesis doctrine. The Court must point out to the jury in its charge, the legal principle that at no time under the net worth expenditures method does the burden of proof from the Government, nor is it altered or changed in any way.

The Court must, we respectfully urge, instruct the jury upon the legal standards pertaining to the important factors of this net worth, among which are: the starting point, the [40] opening net worth, the increase, and other factors as set forth in the proposed requested instructions of the defendant.

The Court: Let your exceptions be noted, and the record will show they are denied.

Do you have anything to say, Mr. Fleming?

Mr. Fleming: No exceptions, your Honor.

The Court: Very well. Will you bring in the jury, Mr. Marshal?

(Thereupon the jury returned to the courtroom.)

The Court: Now, ladies and gentlemen, at long last the case is submitted to you for your consideration and your determination. Just one final word:

It is your duty individually to consider all of the evidence that has been presented before you under the law as given you by the Court, and you should reach a conclusion according to your very best judgment.

The law contemplates that you do reach a verdict. This has been a long trial and an expensive trial. In so doing, you should arrive at your verdict without fear, without favor, without prejudice or sympathy, performing your duty with a sense of the responsibility which rests upon you, and in conformity with your solemn oaths as jurors. You must all agree upon a verdict. In other words, the verdict must be unanimous.

When you arrive in the jury room you will first select [41] a foreman or forelady who will preside over your deliberations and who will sign whatever verdict you arrive at. May I suggest respectfully that you exercise your judgment about who shall

be your foreman or forelady. Sometimes jurors say, "Well, you were the first one in the jury room," or "You were the last one in the jury room," or the third or fourth or fifth, "so you be the foreman." That is a rather stupid way to select a foreman or forelady. Show some discretion about that. Choose someone who will intelligently preside over your deliberations and sign your verdict to which you agree.

The form of verdict contains the title of the cause—title of court and cause, United States of America vs. Chin Lim Mow; "We, the jury, find Chin Lim Mow the defendant at the bar guilty or not guilty, as to Count 1, and guilty or not guilty as to Count 2." It is to be signed by the foreman.

Any of the exhibits which have been introduced in evidence, if you care to resort to them, they will be afforded to you by announcing your wishes to the Deputy Marshal, who will be assigned outside the jury room.

I don't think there is anything further. You may now retire.

Mr. Sullivan: Your Honor, please, may I presume to remind your Honor about the dismissal of the extra juror?

The Court: Yes. I am very sorry. Mr. Bearden, your duties are now at an end. You are [42] excused.

(Thereupon the jury retired to deliberate.)

The Court: The Court will be at recess.

Mr. Sullivan: Your Honor, please, Mr. Hubner

tells me that one of the jurors took an exhibit in with him that was on the seat in the jury box. I wonder if that situation could be corrected? It isn't an exhibit. It has been admitted in evidence, but it is a copy that was put on the chair.

The Court: Tell them to bring back the exhibit. Will that be satisfactory?

Mr. Sullivan: Yes, your Honor.

The Court: The Court will be at recess. [43]

#### CERTIFICATE OF REPORTER

I, Official Reporter and Official Reporter pro tem, certify that the foregoing transcript of 43 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ KENETH J. PECK.

[Endorsed]: Filed October 27, 1952.

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[Title of District Court and Cause.]

#### CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in the above-entitled case and that they constitute the record on appeal as desig-



nated by the attorneys for the appellants herein:

Indictment.

Arraignment.

Plea of Not Guilty.

Motion to quash subpoena.

Affidavit in support of motion to quash subpoena.

Order denying motion to quash subpoena.

Motion to strike evidence.

Minutes of October 10, 1952.

Minutes of October 13, 1952.

Minutes of October 17, 1952.

Plaintiff's instructions given.

Plaintiff's instructions refused.

Defendant's instructions given.

Defendant's instructions refused.

Verdict.

Motion in arrest of judgment.

Motion for new trial.

Minutes of November 3, 1952.

Judgment and commitment.

Notice of appeal.

Cost bond on appeal.

Order for transfer of original exhibits to Court  
of Appeals.

Appellant's designation of contents of record on  
appeal.

Reporter's transcript (23 volumes).



At a Stated Term, to wit: The October Term, 1952, of the United States Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City of San Francisco, in the State of California, on Wednesday, the twelfth day of November, in the year of our Lord one thousand nine hundred and fifty-two.

No. 13653

Present: Honorable William Healy, Circuit Judge, presiding; Honorable Homer T. Bone, Circuit Judge; Honorable Walter L. Pope, Circuit Judge.

CHIN LIM MOW,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER ADMITTING APPELLANT TO  
BAIL PENDING APPEAL

Upon consideration of the Motion of Appellant, filed November 3, 1952, and of the opposition thereto, filed November 7, 1952, and of the oral arguments thereon, and good cause therefor appearing,

It Is Ordered that the motion for bail pending appeal be, and hereby is, granted in the sum of Thirty-five Thousand Dollars (\$35,000.00), cash or bond, condition as required by law, to be approved by the United States District Court for the Northern District of California, and deposited in the registry of that court.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13653

CHIN LIM MOW,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT OF POINTS ON  
APPEAL AND DESIGNATION OF PARTS  
OF RECORD NECESSARY FOR THE CON-  
SIDERATION THEREOF

Appellant above named presents his statement of points upon which he intends to rely on appeal, and designates the parts of the record necessary for the consideration thereof, as follows:

Statement of Points on Appeal

1. Erroneous Admission of Evidence.

The Court committed numerous errors in ruling upon the admissibility of evidence over objections duly made, all of which rulings were highly prejudicial to appellant, as follows:

(a) The denial of appellant's motion to strike the testimony of the witness George Gibbons per-

taining to said witness' trips to Watsonville, Bakersfield, Alviso, Yosemite Club, Hollywood Club, 36 San Pablo Avenue, and The Palms.

(b) The admission in evidence of Government's Exhibits 56, 56a and 56b.

(c) The admission in evidence of (and the denial of a motion to strike) the testimony of the witness James T. Wiley pertaining to his identifying "Account No. 20" on the books of the Gerdon Land Co. (Government's Exhibit 56) with appellant, and the admission in evidence of the testimony of said witness as to how he "attributed" said account in his report to his superiors.

(d) The admission in evidence of all of the testimony of the witness Liston O. Allen, except that preliminary testimony pertaining to his identity and occupation.

(e) The admission in evidence of those certain cancelled checks drawn upon the trustee account of John J. Allen, Jr., and denominated Government's Exhibits 88, 91 and 108-114, inclusive.

(f) The admission in evidence of Government's Exhibits 92-95, incl.; 98, 247 and 248.

(g) The admission in evidence of the corporate minutes of Gerdon Land Co., denominated Government's Exhibits 297 and 298.

(h) The admission in evidence of those portions of Government's Exhibit 311 not connected up with appellant.

(i) The admission in evidence of the testimony of the witness Walter Valdi pertaining to an earlier social security tax investigation and of documents



denominated Government's Exhibits 48, 49, 59 and 156-159, inclusive.

(j) The admission in evidence of documents denominated Government's Exhibits 60 and 186.

(k) The admission in evidence of the testimony of the witness David Shew pertaining to Federal and State income taxes of persons other than the appellant, the returns of income prepared by said witness for such persons, the payment of taxes made by said witness for the account of such other persons, and the reimbursement of said witness for such moneys advanced, and the admission in evidence of exhibits pertaining to the above testimony and denominated Government's Exhibits 42-49, incl.; 188, 189, 191-197, incl.; 199-204, incl.; 208-211, incl.; 215, 220 and 221.

(l) The admission in evidence of certain balance sheets of the Bock Hing Trading Company, denominated Government's Exhibits 223 and 224, and the denial of appellant's motion to strike said exhibits, and the testimony of the witness Christopher M. Harnett in connection therewith.

(m) The admission in evidence of the testimony of the witness William A. Wallace pertaining to the character of the obligation and the identity of the obligee in respect to certain moneys owned by Gerdon Land Company, as reflected in Account No. 20 of the books of said Company.

(n) The denial of appellant's motion to strike the testimony of the witness William A. Wallace pertaining to the alleged receipt of information and instructions from appellant in respect to the shares

of partners to be indicated on various partnership returns of income in evidence.

(o) The admission in evidence of the testimony of the witness William A. Wallace pertaining to the source of information according to his "office routine" in respect to the partners' shares of income reported on various partnership returns of income, and in respect to certain partners' shares as appearing on Government's Exhibits 321-324, inclusive, together with the admission in evidence of said last-named exhibits in order "to show the office routine in the preparation of returns as brought out in previous testimony."

(p) The denial of appellant's motion to strike (made in written form and on file herein) the testimony of the witness William A. Wallace pertaining to the alleged receipt of information and instructions from appellant in respect to the reporting of certain items of income by certain children of appellant on said children's tax returns, to wit, by Alvin Chan (on Government's Exhibit 23), Janet Chan Lee (on Government's Exhibit 25), Norman Chan (on Government's Exhibit 29), and Bertha Chan (on Government's Exhibit 22), and the denial of appellant's oral motion (RT 1519) to strike the testimony of said witness William A. Wallace pertaining to the taking of allowances for depreciation as indicated on Government's Exhibits 19 and 20.

(q) The admission in evidence of the testimony of the witness William A. Wallace pertaining to a conversation of said witness with Revenue Agent

King in respect to the assessment of a 50% fraud penalty for the year 1939.

(r) The admission in evidence of the testimony of the witness William A. Wallace pertaining to the current employment of said witness by appellant (RT 1461-1463), certain testimony given by said witness on the first trial of this case (RT 1463-1467), and a sworn statement given by said witness to the Government on October 18, 1949 (RT 1522, et seq.).

(s) The admission in evidence of the testimony of the witness Charles King pertaining to certain stock brokerage accounts of appellant, and the admission in evidence of Government's Exhibit 171 in connection therewith.

(t) The admission in evidence of (and the denial of a motion to strike) the testimony of the witness Evelyn Lee Chang pertaining to a trustee account of Howard Chang and said witness in the Pacific National Bank, and to transactions relating thereto, and the admission in evidence of certain exhibits in connection with said testimony, denominated by Government's Exhibits 163, 230-235, incl.; 239-241, incl., and 243.

(u) The denial of appellant's motion to strike the testimony of the witnesses Dana E. Bremner, Leon C. Banker, Norman Ogilvie and L. F. Clarke pertaining to the real property located at 5000 Broadway, Oakland, and transactions in respect thereto.

(v) The admission in evidence of (and the denial of a subsequent motion to strike) the testimony

of the witness Evelyn Lee Chang pertaining to the receipt of money or income by her and her husband from the Kuo Hing Wah partnership, and to the interest of said witness and her husband in the Pierce Building, and the admission in evidence of Government's Exhibits 236-238, inclusive.

(w) The admission in evidence of the testimony of the witness Lester Farley pertaining to the capital contributions of appellant in the Elite Co.

(x) The admission in evidence of a certain chart of partnership returns prepared by the witness Frank Filice, denominated Government's Exhibit 275, and of a certain list of alleged income omissions prepared by said witness and denominated Government's Exhibit 334, and the testimony of said witness in connection therewith.

(y) The admission in evidence of (and the denial of a motion to strike) the testimony of the witness Augustus V. Brady, and the admission in evidence of certain documents, calculations, and charts prepared by said witness under the direction of the prosecution and denominated Government's Exhibits 280-282, incl.; 337-342, incl.; 344, 345 and 347.

The cumulative effect of admission of the evidence and exhibits above referred to undoubtedly influenced the jury in arriving at its verdict of guilty, and it is entirely probable that the exclusion of such evidence would have resulted in a verdict of not guilty.

## 2. Insufficiency of Evidence to Sustain the Verdict.

(a) There is no evidence to sustain the verdict on either count of the indictment.

(b) The verdicts on the First and Second Counts of the indictment and each thereof are contrary to the weight of the evidence.

(c) The verdicts on the First and Second Counts of the indictment and each thereof are not supported by substantial evidence.

## 3. Appellant's Motion for Judgment of Acquittal.

(a) The Court erred in denying appellant's motion for a judgment of acquittal made at the close of the evidence offered by the Government.

(b) The Court erred in denying appellant's motion for a judgment of acquittal made at the close of all the evidence.

## 4. Instructions Given.

The Court erred to the substantial prejudice of appellant in giving the jury the following instructions, to all of which counsel for appellant duly objected and stated their grounds therefor:

(a) "The possession of money alone is not sufficient to establish net taxable income. That evidence of the possession of money and the expenditure of money may be considered as part of a chain of circumstances which you may consider in arriving at a conclusion as to whether or not the defendant enjoyed taxable income." (Reporter's Transcript, Court's Instructions to Jury, page 13, lines 2-7.)

(b) "You are instructed that when in a trial on



charges of income tax evasion discrepancies between the defendant's returns and his actual income are indicated by the Government's proof, the failure of the defendant to offer explanation in any form may be considered by you in arriving at your verdict." (RT 13, lines 8-12.)

(c) "The duty to file the return is personal, and it cannot be delegated. Bona fide mistakes should not be treated as false and fraudulent, but no man who is able to read and write and who signs a tax return is able to escape the responsibility of at least good faith and ordinary diligence as to the correctness of the statement which he files, whether prepared by him or prepared by somebody else." (RT 14, lines 7-13.)

(d) "You are instructed, ladies and gentlemen of the jury, that a man may not shut his eyes to obvious facts and say he does not know. He may not close his observations and knowledge to things that are put out in the open and are obvious to him, and say, 'I have no knowledge of those facts.' He can't do that. He must exercise such intelligence as he has, and, if the evidence shows that he intended to conceal tax liabilities from the Government, then of course he was not acting in good faith. This question of intent is a question you must determine for yourselves from a consideration of all the evidence that has been presented before you in the trial of this case." (RT 15, lines 2-13.)

(e) "The jury may regard any act or statement of a person charged with crime tending to show consciousness of guilt to be considered together with

other evidence in the case. This applies to false statements, if any, made by the accused in attempting to explain proven facts.” (RT 16, line 24, to RT 17, line 3.)

(f) “Evidence has been admitted in the trial of this case as to the practice of gambling during the year 1945 on the premises controlled by defendant, and evidence has been admitted that the defendant received income from the practice of gambling during 1945 on which he paid no tax.

“Such evidence, if believed, may be considered by you only for the limited purposes of showing that defendant had a source of income from an illegal business which he concealed from the tax authorities. It may be considered by you to show that the defendant had a plan or scheme of operation in prior years resulting in income to the defendant continuing over to and similar to that used in 1945, and to show the intent of the defendant to defraud the Government of income taxes during the year 1945.” (RT 18, lines 12-25.)

(g) “In connection with the alleged specific instances of fraud, one of the matters to be determined by you is the validity of certain so-called bonus arrangements with employees of the Wai Yuen Club, which club was owned and operated by the defendant. If you should find as a fact that the above bonus checks were not paid as wages but were delivered to the employees involved with the understanding that the amounts involved would be returned to the defendant for his use, you may consider this evidence in reaching your decision as

to whether or not the defendant is guilty of the offenses charged in this indictment.” (RT 20, lines 3-13.)

(h) “The word ‘wilful’ when used in a criminal statute generally means an act done with a bad purpose; without justifiable excuse; or stubbornly, obstinately, perversely. The word is also employed to characterize a thing done without ground for believing it is lawful, or conduct marked by a careless disregard whether one has the right so to act.” (RT 21, lines 6-11.)

(i) “In offering proof that the defendant attempted to evade and defeat payment of income taxes by filing fraudulent returns, the Government is not limited to a single mode or method of proof. In the present case, the Government has sought to show that defendant fraudulently caused part of his income and part of his wife’s income to be reported in the names of other persons in order to get in a lower tax bracket and thus pay less tax in the year 1945 than was due. The Government has also sought to show by the net worth and expenditures method that the defendant fraudulently understated his net income and that of his wife for the year 1945. It is for you to determine whether the Government has proved fraud. But, for the Government to prevail on this issue, it is not necessary that it establish fraud by both methods. It is sufficient to establish that part of the Government’s case, if you find that it has proved fraud by either method.” (RT 21, line 22, to RT 22, line 12.)

(j) “Now, there have been introduced in evidence in this case certain sworn statements and affidavits

of persons having knowledge of the facts to which they made oath. I charge you that either the Government or the defendant is entitled to rely on a sworn statement or affidavit given for a serious purpose, unless there is reason for you to discredit such sworn statement or affidavit." (RT 22, lines 13-19.)

(k) "Now, you have heard expert testimony relating to the issues involved in this case. I charge you that the computations made by an expert are for the convenience of both sides in presenting the case for your consideration. You are not bound by the computations or summaries or other testimony of an expert witness, but you should give such testimony the weight to which you determine it is entitled in the light of the other proof in the case, and also with reference to your conclusions as to whether or not the facts on which the particular expert's testimony was based have been established by the necessary degree of proof. And of course you may reject all of such expert testimony, if, in your opinion, the reasons which are given for it are unsound." (RT 22, line 20, to RT 23, line 7.)

#### 5. Instructions Refused.

The Court erred to the substantial prejudice of appellant in refusing to give the following instructions requested by counsel for appellant: 1-33, incl.; 37, 38, 40, 41, 44-59, incl., and 61.

#### 6. Motion for a New Trial.

The Court erred in denying appellant's motion for a new trial.

Designation of Record

Appellant hereby designates the following record to be printed on this appeal:

1. The entire Clerk's Transcript of Record, including Requested Instructions of Defendant refused by the Court, but excluding Plaintiff's Instructions refused by the Court.

2. The 24 volumes of Reporter's Transcript of the entire proceedings, including the volume entitled "Court's Instructions to the Jury" and containing appellant's exceptions and objections to the charge to the jury and to the Court's failure to charge the jury as requested by appellant.

Appellant further designates that all exhibits in evidence, which have been sent to the Clerk of this Court, be considered on this appeal.

/s/ WILLIAM M. MALONE,

/s/ RAYMOND L. SULLIVAN,

/s/ WILLIAM B. WETHERALL,

/s/ CONRAD T. HUBNER,

Attorneys for Appellant.

Service of Copy acknowledged.

[Endorsed]: Filed December 17, 1952.



[Title of Court of Appeals and Cause.]

STIPULATION DISPENSING WITH REPRO-  
DUCTION OF ORIGINAL EXHIBITS IN  
PRINTED RECORD

Whereas the original exhibits in the above-entitled case include many charts and other documents which cannot practicably be reproduced,

It Is Hereby Stipulated that all of the original exhibits in evidence in said case may be considered in their original form and need not be reproduced in the printed record on appeal.

Dated December 16, 1952.

CHAUNCEY TRAMUTOLO,  
United States Attorney.

By /s/ MACKLIN FLEMING,  
Assistant U. S. Attorney.

/s/ WILLIAM M. MALONE,

/s/ RAYMOND L. SULLIVAN,

/s/ WILLIAM B. WETHERALL,

/s/ CONRAD T. HUBNER,  
Attorneys for Appellant.

[Title of Court of Appeals and Cause.]

ORDER DISPENSING WITH REPRODUCTION OF ORIGINAL EXHIBITS IN PRINTED RECORD

Upon consideration of the stipulation of the parties in the above-entitled case, and Good Cause Appearing Therefore,

It is ordered that the original exhibits in evidence in said case need not be reproduced in the printed record on appeal, and all such exhibits may be considered by this Court in their original form.

Dated December 16, 1952.

/s/ WILLIAM DENMAN,  
United States Circuit Judge;

/s/ WM. HEALY,

/s/ WALTER L. POPE,  
Judges, U. S. Court of Appeals  
for the Ninth Circuit.

[Endorsed]: Filed December 17, 1952.

